United States Court of Appeals for the Second Circuit



APPENDIX

3

76-7036

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT No. 76-7036

ISAAC LORA, etc., et al., on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants, :

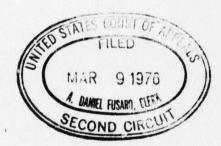
- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.

Defendants-Appellees.

A CONTRACTOR OF THE PARTY OF TH

APPENDIX



CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
189 Montague Street
Brooklyn, New York 11201
(212) 858-1300

Attorney for Plaintiffs-Appellants

GENE B. MECHANICE, ESQ. DEBORAH G. STEINBERG, ESQ. Of Counsel

LIST OF CONTENTS

1.	Complaint	1
2.	Answer of the "City defendants"	51
3.	Answer of Defendants Nyquist, Rios, King and Detore	105
4.	Notice of Motion for Class Action Certification	108
5.	Affidavit in Support of Motion for Class Action Certification	110
6.	Affidavit in Opposition to Class Action Certification	115
7.	Memorandum and Order	119
8.	Notice of Appeal	127

RELEVANT DOCKET ENTRIES

6/11/75	Complaint filed. Summons issued	(1)
10/16/75	ANSWER of defts NYQUIST, RIOS, KING & DETORE filed.	(4)
10/24/75	ANSWER of defts Board of Education of the City of N.Y., et al., filed	(5)
11/14/75	Notice of Motion, ret. 1/1/75 filed re: for class action certification, etc.	(8)
12/1/75	Affidavit in opposition to class certification filed. (mg)	(9)
12/8/75	Before BRUCHHAUSEN, J Case called - Motion argued-Decision reserved.	
1/7/76	By BRUCHHAUSEN, J-Order dtd 1-6-76 denying motion for class action certification and granting the motion to compel discovery subject to conditions stated in the affidavit of J. F. Bruno filed. Copies mailed from Chambers. (mg)	(11)
1/22/76	Notice of Appeal filed. Copy mailed to C of A, etc.	(13)

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora; KELVIN WALTERS, by his mother and legal guardian, Rita Walters; RANJEET MARTIN, by his mother and legal guardian, Melba Martin; JEROME MOORE, by his mother and legal guardian, Thelma Moore; LAWRENCE WHITE, by his mother and legal guardian, Mulvinina White; MELVIN PRINCE, by his mother and legal guardian, Joann Prince; FRANCISCO LUGO, by his attorney, Charles Schinitsky, on behalf of themselves and all others similarly situated,

COMPLAINT

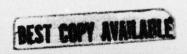
:

CLASS ACTION

Plaintiffs,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK; JAMES F. REGAN, individually and in his official capacity as President of the Board of Education of the City of New York; ISAIAH E. ROBINSON, individually and in his official capacity as Vice-President of the Board of Education of the City of New York; AMELIA H. ASHE, JOSEPH MONSERRAT, ROBERT CHRISTEN, JOSEPH G. BARKAN, STEPHEN R. AIELLO, individually and in their official capacity as members of the Board of Education of the City of New York; ALBERT BUDNICK, individually and in his official capacity as Director of the Bureau for Socially Maladjusted and Emotionally Disturbed Children in the Division of Special Education and Pupil Personnel Services of the Board of Education of the City of New York; HELEN FEULNER, individually and in her official capacity as Executive Director of the Division of Special Education and Pupil Personnel Services of the Board of Education



of the City of New York; VERA S. PASTER, individually and in her official capacity as Director of the Bureau of Child Guidance of the Board of Education of the City of New York; IRVING ANKER, individually and in his official capacity as Chancellor of the Board of Education of the City of New York; EWALD NYQUIST, individually and in his official capacity as Commissioner of Education of the State of New York; IRWIN SHANES, individually and in his official capacity as Principal of P-750Q; SEYMOUR HILOWITZ; individually and in his official capacity as Principal of P-23Q; MAX VOGEL, individually and in his official capacity as Principal of P-9Q; HAROLD BAUGH, individually and in his official capacity as Principal of P-4Q; DAVID MALACOWSKY, individually and in his official capacity as Principal of P-371K; HERBERT DIAMOND, individually and in his official capacity as Principal of P-370K; COY COX, individually and in his official capacity as Principal of P-369K; DOROTHY WILLIS, individually and in her official capacity as Principal of P-141K; MARJORIE LOUER, individually and in her official capacity as Principal of P-85K; MARTIN GROVEMAN, individually and in his official capacity as Principal of P-36K; AL FENSTER, individually and in his official capacity as Principal of P-185X; STANLEY SNITKOFF, individually and in his official capacity as Principal of P-12X; RALPH VACCARO, individually and in his official capacity as Principal of P-169M; EDMOND JAMES, individually and in his official capacity as Principal of P-148M; JUD AXELBANK, individually and in his official capacity as Principal of P-91M; JOSEPH DELBARTO, individually and in his official capacity as Principal of P-82M; GEORGE GOGGINS, individually and in his official capacity as Principal of P-58M; ESTHER ROTHMAN, individually and in her official capacity as Principal of P-8M; NICHOLAS CICCHETTI, individually and in his official capacity as Community School Board

Superintendent for District 11; PHILIP L. GROISSER, individually and in his official capacity as Assistant High School Superintendent for Brooklyn; ABRAHAM WILNER, individually and in his official capacity as Assistant High School Superintendent for Queens; WILLIAM P. DORNEY, individually and in his official capacity as Community School Board Superintendent for District 8; MARVIN AARON, individually and in his official capacity as Commun. ty School Board Superintendent for District 27; JAMES BOFFMAN, individually and in his official capacity as Assistant High School Superintendent for Manhattan, on behalf of themselves and all other community school boards and assistant high school superintendents of the Board of Education of the City of New York; HARRIET OXMAN, individually and in her official capacity as Principal of Erasmus Hall High School; JOSEPH WINTRAUB, individually and in his official capacity as Principal of Newtown High School; SYLVIA BALLAT, individually and in her official capacity as Acting Principal of Julia Richmond High School, on behalf of themselves and all other principals of public schools under the Board of Education of the City of New York; GERALD STARR, individually and in his official capacity as Dean of Boys at Erasmus Hall High School; FRANK VIVONA, individually and in his official capacity as Dean of Boys at Newtown High School; ROBERT KLENOSKY, individually and in his official capacity as Guidance Counselor at P-40; JOSE RIOS, individually and in his official capacity as Youth Division Counselor for the New York State Division for Youth; CHARLES KING, individually and in his official capacity as Deputy Director of the New York State Division For Youth; JAMES DETORE, indivijually and in his official capacity as Director of Placement and Counseling of the New York State Division For Youth; GUNNAR FROST, individually and in his official capacity as a Teacher in P-75Q; DOLORES OLIN, individually and in her official capacity as a Teacher in P-12X,

Defendants.



INTRODUCTION

- 1. This is a class action for declaratory and injunctive relief. The named Plaintiffs herein are all Black and Hispanic children assigned to public schools under the Board of Education of the City of New York which are classified as "special day schools" for the "socially maladjusted and emotionally disturbed." otherwise known as "600" schools. Plaintiffs allege that their rights to due process, equal educational opportunity and to be free from involuntary servitude are being violated because Defendants have placed them into the "600" schools, whose population is overwhelmingly Black and Hispanic, without providing them with adequate and appropriate education. For purposes of this complaint, the "600" schools will be referred to as being "racially" segregated.
 - 2. Plaintiffs also allege that because the "600" schools are sexually segregated while the regular school system is not, they are being denied due process of law and equal protection under the law. Furthermore, Plaintiffs allege that Defendants' pattern and practice of conducting daily searches of the persons of nearly all "600" school students violates both their rights to be free from unreasonable search and seizure and to privacy. Additionally, Plaintiffs allege that Defendants' use of corporal punishment or, in the alternative, use of excessive and unnecessary corporal punishment upon "600" school students is cruel and unusual and violates their right to due process of law.



Plaintiffs further claim that because more resources are available for children assigned to "classes for the emotionally handicapped" than for those placed into 600" schools their rights to equal protection under the law is being violated.

- 3. Finally, Plaintiffs allege that they have been denied due process of law because they have been assigned to "600" schools without adequate notice and an opportunity to be heard at a due process evidentiary hearing to determine whether such assignment is proper and justified, and without receiving a right to periodic review of their status.
- 4. Plaintiffs seek to have the above acts and omissions by Defendants declared unconstitutional. Plaintiffs demand that Defendants be enjoined from continuing their placement in the "600" schools unless these unconstitutional acts and omissions are rectified.

JURISDICTION AND VENUE

5. This is a civil action to redress the deprivation under color of state law of rights, privileges and immunities guaranteed to Plaintiffs by the Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and by Title 42 U.S.C. §§1931, 1983, and 2000(d). The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1343 (3) and (4).

- 6. Plaintiffs' action for declaratory relief is authorized by 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.
 - 7. Venue in this district is proper under 28 U.S.C. §§ 1391 (b) and 1392 (a).

PLAINTIFFS

- 8. Plaintiff ISAAC LORA is a thirteen year old boy who is Hispanic and lives in Bronx, New York. Plaintiff Lora was transferred from Public School ("P.S.") 41 in the Bronx to P-12X, a "600" school in the Bronx in the Fall, 1973, where he remains in placement.
- 9. Plaintiff KELVIN WALTERS is a fifteen year old boy who is Black and lives in Brooklyn, New York. Plaintiff Walters was transferred from Erasmus Hall High School in Brooklyn to P-91M, a "600" school in Manhattan, in the Fall, 1974, where he remains in placement.
- 10. Plaintiff RANJEET MARTIN is a fifteen year old boy who is Black and lives in Queens, New York. Plaintiff Martin was transferred from Newtown High School in Queens to P-58M, a "600" school in Manhattan in February, 1974, where he remains in placement.
 - 11. Plaintiff JEROME MOORE is a fourteen year old boy who

is Black and lives in the Bronx, New York. Plaintiff Moore was transferred from P.S. 39 in the Bronx to P-12X, a "600" school in the Bronx, in the Fall, 1972, where he remains in placement. 12. Plaintiff LAWRENCE WHITE is a thirteen year old boy who is Black and lives in Queens, New York. Plaintiff White was transferred from P.S. 138 in Queens to P-4Q, a "600" school in Queens in March, 1973, and to P-75Q, another "600" school in Queens in March, 1974, where he remains in placement. 13. Plaintiff MELVIN PRINCE is a sixteen year old boy who is Black and lives in Queens, New York. Plaintiff Prince was released from Warwick State Training School in November , 1974, and was assigned to P-58M, a "600" school in Manhattan, where he remains in placement. 14. Plaintiff FRANCISCO LUGO is a fourteen year old boy who is Hispanic and lives in Manhattan. Plaintiff Lugo was transferred from Julia Richman High School in Manhattan to P-82M, a "600"

school in Manhattan in December, 1974, where he remains in placement.

CLASS ACTION- PLAINTIFFS

15. Plaintiffs bring this action on behalf of themselves and all other similarly situated as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure. They are members of a class of persons who are Black or Hispanic and are in placement at

"special day schools" for the "socially maladjusted and emotionally disturbed." 16. This class action is properly brought because: (a) the above class is so numerous that joinder of all members is impracticable. Upon information and belief, there are approximately 2,700 children presently attending special day schools in New York City of which about 2,550 are Black or Hispanic; (b) there are common questions of law and fact, namely, whether Defendants' action of placing minority students into the racially and sexually segregated special day schools violates the rights of Plaintiffs and their class under the Constitution of the United States and the Civil Rights Acts of 1870, 1871, and 1964, and whether the complained of search and seizures and corporal punishment violate Plaintiffs' constitutional rights; (c) the questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy. This Court is a desirable forum in which to concentrate the litigation of the claims of the class, since it has the power to hear all the claims and to grant apprpriate relief; -8-

(d) the claims of the representative plaintiffs are typical of the claims of the members of the class, and it can reasonably be expected that defendants will interpose identical defenses to such claims; (e) The Legal Aid Society of the City of New York, Juvenile Rights Division, attorneys for plaintiffs, will fairly and adequately protect the interest of the class; and (f) furthermore, the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for Defendants. In addition, the Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and corresponding declaratory relief with respect to the class as a whole. DEFENDANTS 17. Defendant BOARD OF EDUCATION OF THE CITY OF NEW YORK exists pursuant to the laws of the State and City of New York and is vested with the legal responsibility for the general control of the public schools. As such, the Board has the authority to determine all questions of general policy relating to the schools, including the "600" schools. Defendant JAMES F. REGAN is President of the Board and Defendant ISAIAH E. ROBINSOM is -9Vice-President of the Board. Defendants AMELIA H. ASHE, JOSEPH MONSERRAT, ROBERT CHRISTEN, JOSEPH G. BARKAN and STEPHEN R. AEILLO, are all members of the Board. Said Defendants are being sued individually and in their official capacities.

- 18. Defendant ALBERT BUDNICK is Director of the Bureau for Socially Maladjusted and Emotionally Disturbed Children ("SMEDC") in the Division of Special Education and Pupil Personnel Services ("DSEPPS") of the Board of Education of the City of New York. In that capacity, he is responsible for both the assignment of children to the "600" schools and the administrative policies and educational programming and policies in such schools. He is being sued individually and in his official capacity. He maintains offices at 110 Livingston Street, Brooklyn, New York.
- 19. Defendant HELEN FEULNER is Executive Director of the Division of Special Education and Pupil Personnel Services of the Board of Education of the City of New York and, accordingly, is responsible for the assignment of children to special education classes and schools, including the "600" schools, and the educational programming and policies and administrative policies in such classes and schools. She is being sued individually and in her official capacity. She maintains offices at 110 Livingston Street, Brooklyn, New York.
- 20. Defendant VERA S. PASTER is Director of the Bureau of Child Guidance ("BCG"), the mental health service agency of the

Board of Education of the City of New York and is thus vested with direction and control over the operation of the BCG team of social workers, psychologists, psychiatrists, and mental health workers who are assigned to work in the City public schools and have begun to certify children as "socially maladjusted" and "emotionally disturbed" prior to "600" school placement. She is being sued individually and in her official capacity. She maintains offices at 162 West 32nd Street, New York City.

- 21. Defendant IRVING ANKER is Chancellor of the Board of Education of the City of New York and, accordingly, is charged with the responsibility of administering the operation of the New York City Public School System. Among his responsibilities is the duty to assure that local school districts within the system and the centralized Division of Special Education and Pupil Personnel Services provide equal educational opportunities for all children attending schools respectively thereunder. He is being sued individually and in his official capacity. He maintains offices at 110 Livingston Street, Brooklyn, New York.
 - 22. Defendant EWALD NYQUIST is Commissioner of Education of the State of New York and, accordingly, is charged with the responsibility of enforcing the policies of the Board of Regents of the State of New York as those policies relate to the operation of the system of public education throughout the State of New York.

Among his responsibilities, pursuant to the policies enunciated by the Board of Regents, and pursuant to the Education Law of the State of New York and the mandate of the United States Constitution, is the duty to assure that local school officials throughout the State of New York provide equal educational opportunity for all children attending public schools in the respective public school districts throughout the State of New York. He is being sued individually and in his official capacity. He maintains offices at the Education Building, Albany, New York.

23. Defendant IRWIN SHANES is principal of P-75Q, a "600" school for boys containing grades five through eight; defendant SEYMOUR HILOWITZ is principal of P-23Q, a "600" school for boys containing grades five through eight; defendant MAX VOGEL is principal of P-9Q, a "600" school for boys containing grades five through eight; defendant HAROLD BAUGH is principal of P-4Q, a "600" school for boys containing grades five through eight; defendant DAVID MALACOWSKY is principal of P-371K, a "600" school for boys containing grades five through eight; defendant HERBERT DIAMOND is principal of P-370K, a "600" school for boys containing grades five through eight; defendant COY COX is principal of P-369K, a "600" school for boys containing grades five through eight; defendant DOROTHY WILLIS is principal of P-141K, a "600" school for girls containing grades seven through twelve; defendant MARJORIE

LOUER is principal of P-85K, a "600" school for boys containing grades nine through twelve; defendant MARTIN GROVEMAN is principal of P-36K, a "600" school for boys containing grades five through eight; defendant AL FENSTER is principal of P-185X, a "600" school for boy's containing grades five through eight; defendant STANLEY SNITKOFF is principal of P-12X, a "600" school for boys containing grades five through eight; defendant RALPH VACCARO is principal of P-169M, a "600" school for boys containing grades five through eight; defendant EDMOND JAMES is principal of P-148M, a "600" school for boys containing grades five through eight; defendant JUD AXELBANK is principal of P-91M, a "600" school for boys containing grades nine through twelve; defendant JOSEPH DELBARTO is principal of P-82M, a "600" school for boys containing grades five through nine; defendant GEORGE GOGGINS is principal of P-58M, a "600" school for boys containing grades nine through twelve; defendant ESTHER P. ROTHMAN is principal of P-8M, a "600" school for girls containing grades seven through twelve. As such, they decide which student referrals to "600" schools are accepted and determine when those in placement are discharged and, possibly, returned to the regular school system. Furthermore, they are responsible for the educational programming within and policies and operation of their respective "600" schools. They are being sued individually and in their official capacities.

24. Defendant NICHOLAS CICCHETTI is community school board

superintendent for District 11. In such capacity, he is responsible for the operation and policies of the public schools within his district, which includes P.S. 41. Additionally, upon information and belief, his approval was necessary for Plaintiff ISAAC LORA to be transferred from P.S. 41 to a "600" school. He is being sued individually and in his official capacity. He maintains offices at Parkchester Houses, 71 Metropolitan Oval, Queens, New York 10462.

- 25. Defendant PHILIP L. GROISSER is an assistant high school superintendent for Brooklyn. In such capacity, he is responsible for the operation and policies of the high schools within his jurisdiction, which includes Erasmus Hall High School. Additionally, upon information and belief, his approval was necessary for Plaintiff KELVIN WALTERS to be transferred from Erasmus Hall to a "600" school. He is being sued individually and in his official capacity. He maintains offices at 110 Livingston Street, Brooklyn, New York 11201.
- 26. Defendant ABRAHAM WILNER is Assistant High School Superintendent for Queens. In such capacity, he is responsible for the
 operation and policies of the high schools within his jurisdiction,
 which includes Newtown High School. Additionally, upon information
 and belief, his approval was necessary for Plaintiff RANJEET
 MARTIN to be transferred from Newtown to a "600" school. He is

being sued individually and in his official capacity. He maintains offices at 110 Livingston Street, Brooklyn, New York 11201. 27. Defendant WILLIAM P. DORNEY is community school board superintendent for District 8. In such capacity, he is responsible for the operation and policies of the public schools within his district, which includes P.S. 39. Additionally, upon information and belief, his approval was necessary for Plaintiff JEROME MOORE to be transferred from P.S. 39 to a "600" school. He is being sued individually and in his official capacity. He maintains offices at 1967 Turnbull Avenue, Bronx, New York 10473. 28. Defendant MARVIN AARON is Community School Board Superintendent for District 27. In such capacity, he is responsible for the operation and policies of the public schools within his district, which encompasses the residence of Plaintiff

LAWRENCE WHITE. Additionally, upon information and belief, he has continuously approved Plaintiff White's placement in a "600" school. He is being sued individually and in his official capacity. He maintains offices at 90-15 Sutter Avenue, Ozone Park, New York 11417.

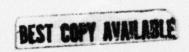
29. Defendant JAMES BOFFMAN is Assistant High School Superintendent for Manhattan. In such capacity, he is respensible for the operation and policies of the high schools within his jurisdiction, which includes Julia Richman High School. Additionally

upon information and belief, his approval was necessary for Plaintiff FRANCISCO LUGO to be transferred from Julia Richman High School to a "600" school. He is being sued individually and in his official capacity. He maintains offices at 100 Livingston Street, Brooklyn, New York 11201.

- 30. Defendant HARRIET OXMAN is principal of Erasmus Hall High School in Brooklyn. In such capacity, Defendant Oxman is responsible for operating Erasmus Hall and implementing the policies of the central school board. In addition, upon information and belief, her approval was necessary for Plaintiff KELVIN WALTERS' transfer from Erasmus Hall to a "600" school. She is being sued individually and in her official capacity. She maintains offices at 911 Flatbush Avenue, Brooklyn, New York 11226.
- 31. Defendant JOSEPH WEINTRAUB is principal of Newtown High School in Queens. In such capacity, Defendant Weintraub is responsible for operating Newtown and implementing the policies of the central school board. In addition, upon information and belief, his approval was necessary for Plaintiff RANJEET MARTIN's transfer to a "600" school. He is being sued individually and in his official capacity. He maintains offices at 48-01 90th Street, Elmhurst, New York 11373.
- 32. Defendant SYLVIA BALLAT is acting principal of Julia
 Richman High School in Manhattan. In such capacity, Defendant

Ballat is responsible for operating Julia Richman and implementing the policies of the central school board. In addition, upon information and belief, her approval was necessary for Plaintiff FRANCISCO LUGO's transfer to a "600" school. She is being sued individually and in her official capacity. She maintains offices at 317 East 67th Street, New York, New York 10021.

- 33. Defendant GERALD STARR is Dean of Boys at Erasmus Hall High School in Brooklyn, from where Plaintiff WALTERS was transferred. As such, upon information and belief, he is responsible for maintaining discipline at Erasmus Hall and assisting male students on miscellaneous school matters. He is being sued individually and in his official capacity. He maintains offices at 911 Flatbush Avenue, Brooklyn, New York 11226.
- 34. Defendant FRANK VIVONA is presently a high school superintendent's hearing officer and was Dean of Boys at Newtown High
 School Annex at the time of Plaintiff RANJEET MARTIN's transfer
 from Newtown to a "600" school. He is being sued individually and
 in his official capacity. He maintains offices at 110 Livingston
 Street, Brooklyn, New York 11201.
- 35. Defendant ROBERT KLENOSKY is the guidance counselor at p-40, a "600" school in Queens, in which Plaintiff WHITE was in placement. As such, he is responsible for determining whether referrals to his school are appropriate. Additionally, he is



obligated to establish a proper counseling program for students in placement at P-4Q. He is being sued individually and in his official capacity.

- 36. Defendant JOSE RIOS is a youth division counselor for the New York State Division for Youth. As such, he is responsible for establishing an adequate and appropriate aftercare program for Plaintiff MELVIN PRINCE during his parole from State Training School. He is being sued individually and in his official capacity. He maintains offices at 89-02 Sutphin Boulevard, Jamaica, New York.
- 37. Defendant CHARLES H. KING is Deputy Director, Rehabilitative Services of the New York State Division for Youth and, upon information and belief, is responsible for the operation of the State Training Schools and the maintenance and development of rehabilitative services for the D.F.Y. He is being sued individually and in his official capacity. He maintains offices at Two World Trade Center, New York City.
- 38. Defendant JAMES DETORE is New York State Division for Youth Director of Placement and Counseling and, upon information and belief, is responsible for the treatment of PINS in the State Training Schools and coordination of their aftercare upon release from said schools. He is being sued individually and in his official capacity. He maintains offices at 2 University Place, Albany, New York.



39. Defendant GUNNAR FROST is a teacher at P-75Q, a "600" school. As such, he is responsible for the education and supervision received by students assigned to his class, which includes Plaintiff LAWRENCE WHITE. 40. Defendant DOLORES OLIN is a teacher at P-12X, a "600" school. As such, she is responsible for the education and supervision received by students assigned to her class, which includes Plaintiff ISAAC LORA. CLASS ACTION - DEFENDANTS 41. Although Defendants listed in paragraphs "17" through "23" and "33" through "40" are not being sued as representatives of a class, Plaintiffs bring this action against the named defendants who are assistant high school superintendents, community school district superintendents, or public school principals and all other assistant high school or community school district

superintendents or public school principals in the City of New

York similarly situated as a class pursuant to Rule 23 of the

Maladjusted and Emotionally Disturbed."

class:

Federal Rules of Civil Procedure. They are members of a class of

persons who are authorized to approve the transfer of Plaintiffs

-19-

and members of their class to "Special Day Schools for the Socially

42. This class action is properly brought because the above

(a) is so numerous that joinder of all members is impracticable. Upon information and belief, there are approximately nine hundred and sixty (960) assistant high school superintendents, community school district superintendents and public school principals in the City of New York, (b) there are common questions of law and fact, namely whether Defendant class' action approving the placement of Plaintiff class in the "600" schools violates Plaintiffs' rights under the Constitution of the United States, (c) the questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for a fair and efficient adjudication of the controversy. This Court is a desirable forum in which to concentrate the litigation of the claims of the class, since it has the power to hear all the claims of the class and to grant appropriate relief, (d) upon information and belief, the defenses of the representative Defendants will be typical of the defenses of the

- members of the class,
- (e) upon information and belief, the Corporation Counsel of the City of New York, attorneys for the Defendant class, will fairly and adequately protect the interest of the Defendant class,

(f) furthermore, the prosecution of separate actions by or against individual members of the Defendant class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Plaintiffs. In addition, the Plaintiffs have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and corresponding declaratory relief with respect to the class as a whole.

FACTUAL ALLEGATIONS

- 43. In doing all the acts herein alleged, all of the Defendants, and each of them, were and are acting under color of state law, custom and usage and by virtue of the authority vested in each of them by the Constitution and the laws of New York State in the capacities as heretofore and hereinafter stated.
- 44. At all times relevant herein, Defendants and each of them, knew, or should have known, of the acts, omissions and conditions alleged herein.
- 45. Under § 3214(2) of the Education Law of the State of New York, "[t]he school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents," who, as defined in

§ 3214(1), are minors under seventeen years of age who are habitually truant from school instruction or are irregular in school attendance or insubordinate or disorderly during such attendance.

The statute names such schools "Special Day Schools."

- 46. Upon information and belief, there are presently eighteen "Special Day Schools" in New York City, containing a total of
 about 2,700 children. The Special Day Schools, otherwise known as
 "600" schools, are under the centralized authority of the Boards's
 Bureau for Socially Maladjusted and Emotionally Disturbed Children
 ("SMEDC"). SMEDC is a bureau of the Division of Special Education
 and Pupil Personnel Services.
- "Special Circular No. 47" on November 22, 1972, thereby establishing official criteria for screening and referral of students to "600" schools. First, the child must have a higher intelligence level than the maximum established for "Children with Retarded Mental Development." Second, there must be "[a]history of repeated disruptive and aggressive behavior, extensive in scope and serious in nature, which either endangers the safety of pupils or others, or seriously interferes with learning in the classroom." Third, the child must have a history of truancy and, finally, the pupil must have failed "to respond to intensive efforts by the

home school to help him." 48. Special Circular No. 47 requires that preliminary screening be performed by the referring guidance counselor, "or by other appropriately trained professional persons designated by the [community or supervising assistant] superintendents. It further states that the district guidance coordinator and the referring guidance counselor should assist the Bureau of Child Guidance (BCG) team by assembling all data pertinent to the referral. BCG is the mental health component of the Board. The community school superintendent, or supervising assistant superintendent if a high school student is involved, must approve the counselor's recommendation. 49. Following the preliminary screening, Special Circular # 47 requires that the principal and guidance counselor of the "600" school to which a child has been referred, interview the child. When a referral does not seem appropriate, the Circular mandates that the superintendent of the "600" school evaluate all the available data and "work out appropriate steps to be taken." The circular also states that a "letter of parental consent should accompany the referral." 50. Upon information and belief, despite the student evaluation procedures set forth in Special Circular No. 47, children who are now in placement in "600" schools, which include all the named Plaintiffs, have not received an appropriate evaluation by

-23-

the Bureau of Child Guidance or others, prior to placement. 51. Upon information and belief, at a conference of "600" school principals held on April 16, 1975, Defendants Budnick and Feulner issued a memorandum setting forth a new short-term procedure for placement of students in "600" schools which differs from Special Circular No. 47. The memorandum states that "[s]tudents who have difficulty in meeting the demands of the school situation will be referred by the Principal to the BCG worker," who is in turn to arrange for an examination for the clinical certification of the child as "emotionally handicapped." 52. Upon information and belief, the April 16, 1975, memorandum establishes changes in the criteria for eligibility for "600" school placement. The first two criteria, enumerated in paragraph "47" of this complaint, are to remain the same. However, the memorandum proposes that the third criteria be "[t]he failure of the pupil to respond to intensive efforts by the home school to help him" and "[t] he student's problems in adjustment clinically determined as potentially responsive to the day school setting as offered." The final criterion suggested is "[t]he inability of the student to function in a regular school setting because of a chronic and severe behavior disorder." 53. Upon information and belief, neither Special Circular 47, under which the named plaintiffs were placed, nor the -24recent memorandum setting forth changes in placement procedures and criteria, provide a mechanism for establishing both the particular educational and social needs of a referred student and an adequate and suitable program designed to meet those needs. Moreover, no method for periodic review of the status of individuals in "600" school placement has been instituted. 54. Although the "600" schools were established, ostensibly, to segregate severe disciplinary problem children from others and to give such children more individualized attention, the assignment of children to such schools has become an institutionalized method to perpetuate a dual system of education in New York City, whereby Black and Hispanic youngsters are isolated into a racially segregated system which fails to provide them with an adequate and suitable education. 55. Upon information and belief, parents of minority group children most often consent to their children's assignment to a "600" school as a result of misinformation and coercion by Defendants. They are not aware that the schools are obligated to make

- children most often consent to their children's assignment to a "600" school as a result of misinformation and coercion by Defendants. They are not aware that the schools are obligated to make intensive efforts to help their children. Nor are they aware that their children are being subjected to institutional racism which excludes them from the regular schools for behavior which will not be treated in the "600" schools, and for which white children are not referred to these isolated institutions.
 - 56. Upon information and belief, children who are placed in

"600" schools are neither asked to consent to such placement nor are they given an opportunity to inquire into and rebut allegations that such placement is appropriate and justified. Rather, they are "pushed out" of their regular schools into an isolated system because they are minority group children for whom Defendants have failed to provide with an adequate academic program and with appropriate guidance to foster normal social adjustment. 57. By placing Plaintiffs in the "600" schools, Defendants finally and irrevocably brand Plaintiffs as outcasts from the educational and social mainstream. Such placement creates a self-

- fulfilling prophecy propelling Plaintiffs and members of their class toward academic, social and economic failure.
- 58. Upon information and belief, youths who are discharged from "600" schools and are returned to the regular school system are closely scrutinized by regular school officials, who often threaten them with retransfer to a "600" school for acts which when committed by other students are overlooked.
- 59. Upon information and belief, except for rare cases, white children are not transferred to "600" schools. The population of the special schools is almost totally Black and Hispanic. Out of a population of about 2,700 children, 64% are Black, 28% are Hispanic, and only 8% "other." The racial composition of the

entire New York City public school system is 36.6% Black, 23.2% Hispanic and 40.2% "other." 60. Upon information and belief, less than ten per cent (10%) of all children who pass through the "600" school system ever obtain a high school diploma. 61. Upon information and belief, most children who enter the "600" school system leave it years later without any improvement in their reading level. 62. Although the overall New York City public school system is decentralized, pursuant to Education Law § 2590, with thirtytwo community school districts, the "600" school system is an autonomous, centralized system. Upon information and belief, Defendants generally do not permit Plaintiffs to attend "600" schools in their communities, should they exist there, but rather force them to travel to distant "600" schools even though such travel does not foster racial integration. 63. Although the overall New York City school system is sexually integrated, the schools within the "600" school system are sexually segregated. P-14K and P-8M are all-girls' schools and the remainder of the "600" schools are all-boys' schools. Hence, Plaintiffs and members of their class are deprived of an important avenue for educational and social interaction which is available to other public school students. -27-

64. Upon information and belief, Defendants have perpetuated a policy of indiscriminately searching the persons of Plaintiffs and members of their class each morning, either when they enter the school building or when they enter their classroom. Such mass searches take place without reason or probable cause, but merely on the pretext that because these children are allegedly "socially maladjusted" or 'emotionally disturbed" they may be carrying weapons. These searches create a penal rather than educational atmosphere. 65. Upon information and belief, Defendants have given tacit and excessive corporal punishment against Plaintiffs and members of their class rather than more educative and therapeutic means

- approval to teachers in the "600" school system to use unnecessary for maintaining decorum in the classroom. Such punishment is allocated arbitrarily and indiscriminately and reinforces Plaintiffs' perception of themselves as immoral children.
 - 66. Upon information and belief, the Board of Education operates "classes for the emotionally handicapped" ("CEH"), which are special education classes held within regular elementary, junior high and secondary public schools. The Board assigns children to these classes, who they believe exhibit such characteristics as thinking disorders, bizarre behavior and severe emotional crises. CEH classes are separated into centers for the "severely

emotionally handicapped." or "A" centers, and the "moderately emotionally handicapped." or "B" centers. The children assigned to CEH must have average or above average intellectual potential and an absence of major neurological deficit. 67. Upon information and belief, there are on the average fifteen students in each "600 school class, who are supervised by one teacher, who need not be certified to teach special education. Yet, there are only six to twelve students in each of Defendants' CEH classes. Moreover, three teachers and two paraprofessionals are assigned for every two CEH classes. Hence, the staff resources available for CEH classes far surpass those available for "600 school classes even though children in both types of classes have been designated as having emotional problems which require special education. ISAAC LORA 68. Plaintiff Isaac Lora began attending PS-41 in December, 1972, when he was ten years old. At that time, he was in the fourth grade. Upon information and belief, the population of PS-41 is predominantly white. 69. Upon information and belief, on several occasions, Isaac's guidance counselor telephoned Isaac's mother at home and alleged that Isaac had been involved in fights with other boys. Isaac's school record bears two entries indicating meetings be-

tueen PS-41 school personnel and his parents. Upon information

and belief, Isaac was not offered adequate guidance or counseling

by the school, despite allegations by school personnel that he presented a behavior problem 70. When Isaac was suspended from school for one week in June, 1973, his guidance counselor told him and his mother that it would be better for Isaac to go to a "Special Day School." Upon information and belief, the guidance counselor did not explain to Isaac's mother that the "Special Day School" is what is commonly known as a "600" school. Upon information and belief, Mrs. Lora was not informed that PS-41 was obligated to make intensive efforts to help Isaac prior to transferring him out of the educational mainstream. Mrs. Lora agreed to the transfer. Isaac remained at PS-41 until October, 1973, when he as transferred to P-12X, a "600" school for boys in grades five through nine. 71. Upon information and belief, Isaac's transfer to P-12X was requested by Isabel McNabb, then principal of PS-41, and recommended for approval be Defendant Nicholas Cicchetti, Community school board superintendent for District 11, wherein PS-41 is located. 72. Upon information and belief, Plaintiff Lora was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for his transfer and the appropriateness of "600" school placement. 73. Upon information and belief, the population of P-12X is almost entirely Black and Hispanic. Moreover, no girls can attend the school. -3074. At P-12X, Isaac has been physically struck on many occasions by teachers, including Defendant Olin, who, upon information and belief, are acting in accordance with Defendants' tacit approval. The teachers sometimes use rulers, sticks or belts as weapons. On many occasions, Isaac has been searched without reason by Defendant Olin at school, and he has seen other boys similarly searched. Upon information and belief, Defendants encourage such searches. The door to P-12X is kept locked during the school day.

75. Isaac sees a person called a social worker at school for approximately one half hour twice a week but does not receive adequate therapeutic counseling. Upon information and belief, he has not been tested or examined by the Bureau of Child Guidance, either prior or subsequent to his transfer to P-12X.

76. P-12X offers Isaac no special education instruction which meets his particular needs. The longer he remains in a "600" school, the more difficult it will be for him to discard the stigma which has already attached to him and to make up the educational and social development which he is not attaining in the "600" school.

KELVIN WALTERS

77. Plaintiff Kelvin Walters has been subjected to a history of educational neglect, discrimination and arbitrariness, culminating in his suspension from Erasmus Hall High School and placement in P-91M, a "600" school for boys in grades nine through twelve located in Manhattan.



78. Upon information and belief, Plaintiff Walters was suspended from Erasmus Hall High School in Brooklyn on or about May 23, 1974, by the school's principal, Defendant Oxman. On or about June 4, 1974, Plaintiff's mother, Rita Walters, received a telephone call from Defendant Groisser notifying her that since it was not anticipated that Kelvin would return to Erasmus, a superintendent's suspension hearing was scheduled for that day. Because eight school days had already elapsed since Plaintiff's suspension, Defendants Oxman and Groisser had violated Plaintiff's right to a hearing within five days of the suspension pursuant to the New York State Education Law § 3214(3)(3) and Special Circular No. 103, 1969-1970 of the Board of Education.

79. Upon information and belief, on June 4, 1974, Mrs.
Walters requested that the suspension hearing be adjourned.
However, the Board of Education refused to reschedule the hearing for that school year, stating to Mrs. Walters that the school year is nearly finished. Hence, Plaintiff Walters was not allowed to attend any school classes for the remainder of the school term, or approximately another three weeks.

80. Upon information and belief, Mrs. Walters received a "yellow card" during the summer of 1974, stating that Plaintiff Walters should return to Erasmus in the Fall for his tenth grade class. When September arrived, Kelvin went to Erasmus but on the third day of classes, September 11, Defendant Starr, the dean of



boys, told him that he was suspended last year and did not belong in school. After making an illegal and fruitless search of Plaintiff's person, Starr sent him home.

81. Upon information and belief, another superintendent's hearing was not scheduled until October 3, 1974, 20 school days after Plaintiff Walters was again told to leave Erasmus. At the hearing, Kelvin was found to have broken into school lockers and taken money from three other students "under a threat of compulsion" on May 22 and 23, 1974, even though he was not represented by counsel and none of the students Kelvin allegedly robbed testified at the hearing.

- 82. Upon information and belief, on October 10, 1974, defendant Groisser approved the recommendation of the suspension hearing officer that Plaintiff Walters be placed in a "600" school, even though neither Plaintiff nor his mother had had the opportunity to inquire into and rebut the commendation, and Kelvin had not been examined by the Bureau of Child Guidance. On December 18, 1974, Rita Walters received a letter from Defendant Groisser stating that Kelvin had been accepted for placement at P-91M. Neither Mrs. Walters nor Kelvin were given the opportunity at a due process evidentiary hearing to demonstrate that such placement was not appropriate.
- 83. Upon information and belief, Plaintiff Walters was neither permitted to attend school classes nor given an adequate

education substitute during four school months after he was susended from Erasmus and before he was accepted for placement at p-91M.

- 84. Plaintiff Walters often has not attended P-91M. Upon information and belief, his mother vehemently protests her son's clacement in a "600" school and his subjection to the conditions therein. P-91M's population consists of only Black and Hispanic boys. Every school morning at 8:30 AM all the boys at P-91M cust place all their property in a bag which is kept by school officials until the end of the school day. Then members of the staff search the person of each boy, including Kelvin. Defendants encourage such searches. The boys are locked in the school until the end of the day when Kelvin and the other boys are parched to the subway by staff who watch them go through the turnstile.
- 85. Plaintiff Walters' placement in P-91M is perpetuating his now poor academic education. The school curriculum consists mainly of gym, ceramics, metalwork and woodshop, with no special instruction to improve his academic achievement.
- 86. The physical condition of P-91M is poor, with plaster falling off the walls and garbage and paper always on the floors of the hallways and classrooms. The boys have no place to wash since the bathrooms have no usable sinks.

RANJELT MARTIN

87. In (actomber, 1973, Plaintiff Ranjest Martin, then aged thirteen, bejon attending Newtown High School Annex ("Newtown") in

Queens. Upon information and belief, Newtown is a racially integated high school. 88. In or about February, 1974, Ranjeet arrived at school late one morning. He was barred from entering the school by Defendant Frank Vivona, a school dean, who kicked him and loudly told him to leave the school. Ranjeet responded to Mr. Vivona angrily, but thereafter went home and returned with his parents to school. 89. Upon information and belief, when Ranjeet's parents arrived at Newtown, Mr. Vivona took them into a room without their son. Upon information and belief, Mr. Vivona told Ranjeet's parents that unless they consented to Ranjeet's transfer to P-58M, a "600" school for boys in grades nine through twelve located in Manhattan, Ranjeet would be suspended from Newtown. They were not informed that Newtown was obligated to make intensive efforts to help Ranjeet prior to transferring him out of the regular school system. Ranjeet's parents signed the consent. Upon information and belief, Ranjeet's transfer to P-58M was requested by Defendant Joseph Weintraub, principal of Newtown, and recommended for approval by Abraham Wilner, assistant superintendent for Newtown. 90. Upon information and belief, Plaintiff Martin was denied the opportunity to inquire into and rebut at a due process evidentransfer and the reasons for his transfer and the appropriateness "600 school placement. -35-

91. Upon information and belief, during his five months as a student at Newtown, Ranjeet met with a guidance counselor no more than twice, each time for a period of a few minutes. During that five month period he received no guidance or counseling assistance. In February, 1974, Ranjeet was transferred to P-58M where he remains in placement. Ranjeet was not tested or examined by BCG, either prior or subsequent to his transfer to P-58M, nor has he been seen by a psychiatrist or psychologist at P-58M. 92. Upon information and belief, the population of P-58M is almost entirely Black and Hispanic and consists of all boys. 93. Ranjeet lives in Jackson Heights, Queens, and must travel about three hours a day to and from school in Manhattan. When he arrives at school each morning, his person is searched by a teacher who acts, upon information and belief, with the encouragement of Defendants. Ranjeet has seen teachers physically and excessively strike students and fears being struck himself. Upon information and belief, the teachers act in accordance with Defendants' tacit approval. 94. For several months during the 1974-75 academic year, Ranjeet was assigned to the High School Return ("HSR") class at P-08M and received some academic instruction. However, Ranjeet was removed from HSR because he was often arriving late at school due to his long journey. Now he is assigned to classes in woodhop, auto mechanics, and tailoring, and receives inadequate acalemic instruction. -36-

95. Upon information and belief, Ranjeet receives minimal, it any, guidance or counseling at P-58M. He is assigned a person called a social worker, with whom he meets no more than once a week for twenty minutes. 96. Ranjeet wishes to soon return to regular high school, but fears that he will not be permitted to return. Further, because of his "600" school experience, Ranjeet fears that if and when he returns to regular high school, he will be academically inferior to others in his class. Additionally, he will be stigmatized by school officials and threatened with return to a "600" school. JEROME MOORE 97. Prior to his transfer to P-12X, a "600" school in or about September, 1972, Plaintiff Jerome Moore attended PS-39, an integrated school located on Longwood Avenue in the Bronx. Although Jerome was involved in several fights while at PS-39, he was never offered any guidance or counseling services. 98. Upon information and belief, Jerome's transfer to P-12X was requested by Lawrence Hirsch, then principal of PS-39 and recommended for approval by Defendant William P. Dorney, community school board superintendent of District 8 wherein PS-39 is located. 99. Upon information and belief, Jerome's mother Thelma Moore was pressured to consent to her son's transfer to P-12X. trich and Decendant Dorney did not inform her that PS-39 was obligated to make intensive efforts to help Jerome prior to trans--37-

ferring him out of the regular school system, but instead misled her to believe that the transfer would be beneficial. Jerome remains in P-12X despite his mother's recent efforts to have him transferred. 100. Upon information and belief, Plaintiff Moore was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for his transfer and the appropriateness of "600" school placement. 101. Upon information and belief, Jerome was not tested or examined by BCG either prior to subsequent to his transfer to P-12X. Furthermore, Jerome has not received any theapeutic counseling at the "600" school. 102. Jerome's classes at P-12X are frequently interrupted by fights. Upon information and belief, with Defendants' tacit approval, teachers use excessive and unnecessary corporal punishment and strike students, often using sticks as weapons. The teachers are acting with Defendants' tacit approval. Moreover, each morning teachers indiscriminately and arbitrarily perform searches on the persons of Jerome and the other students, with Defendants' encouragement. 103. Upon information and belief the population of P-12X is almost entirely Black and Hispanic, and contains only boys. 104. Jerome feels that his continuing placement in P-12x is causing him isreparable harm by stigmatizing him as a "600" school student and by retarding his educational and social development. -38-

LAWRENCE WHITE

school system began in March, 1973, when he was ten years old and was transferred pursuant to his mother's consent from PS-138 in Queens to P-4Q, a "600" school for boys in grades 5 through 8 located in Queens. Upon information and belief, however, his mother, Mulvinina White, was misled by Defendant Robert Klenosky into believing that such placement would be beneficial for her son. She was not informed that PS-138 was required by Board of Education rules to make intensive efforts to help Lawrence.

106. Plaintiff White was not given the opportunity to inquire into and rebut allegations that "600" school placement was appropriate. Moreover, upon information and belief, he was not examined by a BCG psychologist or psychiatrist prior to his transfer.

whelmingly Black and Hispanic. Only boys attend the school. The doors to each classroom are always locked. In the classrooms, many children spend their time sleeping with their heads on their desks without being disturbed by their teachers. The school's stairwells reek with the odor of urine. The school is operated through fear, and Plaintiff White was constantly afraid that if he expressed himself in any nonconforming manner he would receive excessive and unnecessary corporal punishment from teachers with the tacit approval of Defendants. Furthermore, he and the other boys had their persons searched every morning before school began

by their teachers, upon information and belief, with Defendants' encouragement. 108. Plaintiff White was transferred to P-75Q, another "600" school for boys in grades 5 through 8 located in Queens, in March, 1974. Once again, he was denied the opportunity to inquire into and rebut the reasons for scuh transfer. The racial and sexual segregation and other abuses existing at P-4Q are also present at P-75Q. In regard to corporal punishment, on or about May 22, 1975 Defendant Frost, Lawrence's teacher, slammed him against a classroom wall so hard that the boy's back was in pain until the next day. Upon information and belief, Frost acted under the false impression that Lawrence had been fighting with another student. 109. Upon information and belief, Plaintiff White did not receive adequate therapeutic counseling at P-4Q by the Bureau of Child Guidance or otherwise, and does not now receive such counseling at P-75Q even though a school psychologist has diagnosed Lawrence as experiencing considerable emotional tensions. 110. Upon information and belief, Plaintiff White has throughout his schooling had great difficulty learning basis academic skills, but rather than seeking alternative which might have assisted him, Defendants have further retarded his educational development by placing him in the present "600" school system. His reading and math skills remain on the third grade level. 111. Upon information and belief, Plaintiff White remains in placement at P-75Q even though Defendant Shanes, the school's -40principal, wrote a letter to Defendant Marvin R. Aaron, acting superintendent of community school district 27 in January, 1975, suggesting that Plaintiff White be returned to a regular school. Defendant Aaron has failed to speedily and properly act upon such recommendation. MELVIN PRINCE 112. Plaintiff Melvin Prince was adjudicated a "juvenile deliquent" by the Queens Family Court and was placed at Warwick State Training School on October 26, 1973, where he remained until he was paroled on December 22, 1974. Upon release, Melvin was placed in Manhattan High School (P-58M), a "600" school for boys in grades 9 through 12, located in Manhattan. 113. Plaintiff Prince stopped attending P-58M after three weeks because the school placement was not promoting his constructive reintegration into the community but rather was reinforcing the negative attitudes which resulted in his training school confinement. In fact, "600" school placement is, in reality, extend-

ing his training school confinement for six hours each weekday.

114. Upon information and belief, Plaintiff Prince was placed in P-38M with the approval of Defendant Rios, his Division For Youth aftercare worker, and has not been transferred even though he has told Rios that he was sure he was going to have serious problems if he was not placed in an appropriate program.

115. Upon information and belief, Plaintiff Prince is not

provided with any professional therapy by the Bureau of Child Guidance or others while in placement at P-59M despite the fact that the school is ostensibly for "socially maladjusted and emotionally disturbed children."

therefore is being forced to travel three hours per day to attend the "600" school. With Manhattan High as his only alternative, Melvin no longer goes to school. When he attended, he underwent a search of his person each morning performed by a teacher at Defendants' direction. He had also seen teachers physically strike students with excessive force for apparently no legitimate reason and feared being struck himself.

117. Upon information and belief, P-58M's population is almost entirely Black and Hispanic. Moreover, all the students are boys, which essentially destroys any chance a sixteen year old boy who has spent over a year in an isolated boys' training school has to meet girls. In addition, the "600" school offers no special instruction which meets Plaintiff Prince's educational needs.

FRANCISCO LUGO

118. Plaintiff Francisco Eugo is a fifteen year old Hispanic boy who, on December 4, 1974, following a superintendent's suspension hearing, was transferred from Julia Richman High School in Manhattan to P-32M, a "600" school for boys in grades 5 through located in Manhattan, on the ground that he allegedly struck

white teacher. Defendants refused to allow him to attend any school from October 23, 1974, the day he allegedly struck a teacher, to December 13, 1974 when he began to attend the "600" school. 119. Upon information and belief, Plaintiff Lugo's transfer was unwarranted and a result of the fear of minority students which pervades the overwhelmingly white teaching faculty and administrative staff in the New York City school system, leading to their overreaction and educational misfeasance. 120. Upon information and belief, Plaintiff Lugo did not receive any counseling aimed at dealing with his problems at Julia Richman High School. He did not have the opportunity to inquire into and rebut at a due process hearing the appropriateness of his place in a "600" school. Rather, he was ordered by Defendants Bollatt and Cohen to choose between returning to a residential home in the Bronx in which he was formerly in placement, or attending a "600" school for "socially maladjusted and emotionally disturbed children." 121. Upon information and belief, Plaintiff Lugo was not examined by BCG prior to his placement in a "600" school, and he presently receives no therapeutic counseling. Moreover, P-82M offers no special instruction which meets Francisco's educational neds. 122. Upon information and belief, P-82M has a student popution which is almost entirely Black and Histanic. Moreover, irls cannot attend the school. -43123. Plaintiff Lugo hopes to attend a regular high school in the Fall, 1975, but his alternatives are severly limited because of his stigmatization as a "600" school student. Upon information and belief, many high schools for which he is eligible and wishes to attend do not accept "600" school students.

124. Upon information and belief, Plaintiff Lugo's stigmatization as a "600" school student will follow him to whatever future schools he attends and for the least provocation, such school

and will continue to suffer irreparable harm from the conditions set forth above unless and until the declaratory and injunctive relief sought herein is granted by the court.

officials will return him to a "600" school.

LEGAL CLAIMS

ment of plaintiffs and members of their class in "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed." with the natural and forseeable consequence that such placement isolates them within a racially segregated school system, without providing them with adequate and appropriate education violates the rights of plaintiffs and members of the class to due process of law in violation of the Fourteeth Amendment to the United members Constitution, deprives them of equal educational opportunity in violation of the equal protection clause of the Fourteenth

Amendment to the United States Constitution and perpetuates a system of involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution.

127. Defendants' act of placing and continuing the placement of Plaintiffs and members of their class in "Special Day Schools

- of Plaintiffs and members of their class in "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed" when less drastic means can achieve the purpose of compulsory school attendance -- ostensibly, education -- violates the rights of Plaintiffs and members of their class to due process of law under the Fourteenth Amendment to the United States Constitution, and under 20 U.S.C. § 1413(a).
- members of their class into "Special Day Schools for the Socially Maladjusted and Emotionally Distrubed" without adequate notice and an opportunity to be heard at a due process evidentiary hearing to determine whether such assignment is proper and necessary, and failing to provide them with periodic review of their status, violates the right of Plaintiffs and members of their class to due process of law under the Fourteenth Amendment to the United States Constitution, and under 20 U.S.C. § 1413(a).
- 129. Defendants' act of subjecting Plaintiffs and members of their class to the "Special Day School" system because they are,

supposedly, children with emotional problems who require special education, while at the same time, other children similarly situated are assigned to "classes for the emotionally handicapped," special education classes held within regular public schools with fewer students and more staff resources, violates the right of of Plaintiffs and members of their class to equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution.

130. Defendants' act of subjecting Plaintiffs and members of

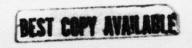
- 130. Defendants' act of subjecting Plaintiffs and members of their class to the "Special Day School" system, in which schools are sexually segregated, when the regular public school system is sexually integrated, violates the rights of Plaintiffs and members of their class to due process of law and equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution.
- out probable cause performing searches upon the persons of Plaintiffs and members of their class violates the rights of Plaintiffs
 and members of their class to be secure against unreasonable search
 and seizure under the Fourth Amendment to the United States Constitution and to privacy under the United States Constitution.
- 132. Defendants' policy and practice of summarily using excessive corporal punishment against Plaintiffs and members of their

violates the rights of Plaintiffs and members of their class
to be free from cruel and unusual punishment under the Eighth
Amendment to the United States Constitution and to due process of
law under the Fourteenth Amendment to the United States Constitution.

133. Plaintiffs have no plain, adequate or complete remedy at law to redress these wrongs.

WHEREFORE, Plaintiffs respectfully demand:

- A. That an order issue permitting this action to proceed as a class action.
- B. That a judgment issue declaring that the acts and omissions complained of herein:
- (1) deny equal educational opportunity in violation of the Fourteenth Amendment to the United States Constitution;
- (2) violate the right of Plaintiffs and members of their class to the least restrictive alternative pursuant to the Fourteenth Amendment to the United States Constitution;
- (3) violate the right of Plaintiffs and members
 of their class to due process of law under the Fourteenth Amendment
 to the United States Constitution;
- (4) violate the right of Plaintiffs and members of their class to equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution;



(5) violate the rights of Plaintiffs and members of their class to be secure against unreasonable search and seizure under the Fourth Amendment to the United States Constitution and to privacy under the United States Constitution; (6) constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution; (7) perpetuate involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution. C. That Plaintiffs and their class be granted preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions alleged herein. D. That the Court issue an order enjoining and restraining Defendants from continuing the placement of Plaintiffs and members of their class in the "Special Day Schools for the socially Maladjusted and Emotionally Disturbed." E. That Defendants be further enjoined and restrained from retransferring Plaintiffs and members of their class to the "Special Day Schools for the Socially Maladjusted and Emotionally Distrubed" unless they are provided with a due process hearing before an impartial officer prior to said transfer, wherein they receive prior written notice of the basis for said transfer, an opportunity to cross-examine witnesses and present testimony and evidence through an attorney and, unless said schools are racially -48and sexually integregated, provide an adequate and suitable education and are free from corporal punishment and unreasonable search and seizures. F. That the Court issue an order enjoining and restraining Defendants from continuing their policy and practice of segregating Plaintiffs and members of their class into separate schools within the "Special Day School" system on the basis of sex. G. That the Court issue an order enjoining and restraining Defendants from continuing their policy and practice of performing unreasonable searches, without probable cause, of the persons of Plaintiffs and members of their class. H. That the Court issue an order enjoining and restraining Defendants from continuing their policy and practice of using

H. That the Court issue an order enjoining and restraining Defendants from continuing their policy and practice of using corporal punishment against Plaintiffs and members of their class or, in the alternative, excessive corporal punishment against Plaintiffs and members of their class, and requiring Defendants to maintain written reports describing all incidents in which any corporal punishment is used against Plaintiffs and members of their class and further requiring Defendants to make such reports available to Plaintiffs' attorneys upon request.

I. That the Court issue an order requiring Defendants
to expunge from the school records of Plaintiffs and members of
their class any and all references to their placement in "Special
Day Schools for the Socially Maladjusted and Emotionally Disturbed

J. That this Court retain jurisdiction over Defendants and each of them until such time as the Court is satisfied that their acts and omissions alleged herein no longer exist and will not reoccur.

K. Such other and further relief as to this Court seems just and proper.

Respectfully submitted,

CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
JUVENILE RIGHTS DIVISION
By:

Gene B. Mechanic and Deborah G. Steinberg, of Counsel

Attorney for Plaintiffs 189 Montaque Street Brooklyn, New York 11201 (212) 858-1300 UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others

similarly situated,

ANSWER

Plaintiffs,

: 75 Civ. 917

v.

(WB)

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants

perendants :

Defendants Board of Education of the City of New York,
Regan, Robinson, Ashe, Monserrat, Christen, Barkan, Aiello,
Budnick, Feulner, Paster, Anker, Shanes, Hilowitz, Vogel, Baugh,
Malacowsky, Diamond, Willis, Louer, Groveman, Fenster, Snitkoff,
Vaccaro, James, Axelbank, Del Barto, Goggins, Rothman, Cicchetti,
Groisser, Wilner, Dorney, Aaron, Boffman, Oxman, Weintraub,
Ballat, Starr, Vivona, Klenosky, Frost, Olin Thereinafter
referred to as the "City defendants") by their attorney W.
BERNARD RICHLAND, Corporation Counsel, City of New York, hereby
answer the complaint as follows:

Deny each and every allegation contained in paragraphs 2, 3, 16, 42, 44, 50, 54, 55, 57, 85, 101, 109, 119, 129,
 125, 126, 127, 128,/ 130, 131, 132, 133 of the complaint.

2. Admit the allegations contained in paragraphs 7, 25, 26, 27, 30,/ 34, 66 of the complaint. 3. Deny the allegations contained in paragraph "1" of the complaint except admit that this is an action for declaratory and injunctive relief; that the named plaintiffs herein are Black and Hispanic children assigned to public schools under the aegis of the Board of Education of the City of New York ("City Board"), which schools are designated as special day schools for the education of socially maladjusted and emotionally disturbed children (SMED schools). 4. Deny the allegations contained in paragraph 4 of the complaint except admit that plaintiffs purport to bring this action for declaratory and injuctive relief. 5. Deny the allegations of paragraphs 5 and 6 of the complaint which allege that this Court has jurisdiction under 28 U.S.C. §1343(3) and 4 and that this action is properly cognizable under 42 U.S.C. §§1981, 1983 and 2000D, the Fourth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States. 6. Deny each and every allegation contained in paragraph 8 of the complaint, and affirmatively state that plaintiff Isaac Lora's permanent school record indicates that his date of birth is January 14, 1962 and that as of October 17, 1973, ha/enrolled at P-12X, located at 2555 Tratman Avenue in the Bronx. -52-

7. Deny each and every allegation contained in paragraph 9 of the complaint, and affirmatively state that plaintiff Kelvin Walter's permanent school record indicates that his date of birth is December 22, 1959 and that, as of November 1974, he was enrolled in P-91M, located at 198 Forsyth Street in Manhattan. 8. Deny each and every allegation contained in paragraph 10 of the complaint, and affirmatively state that plaintiff Ranjeet Martin's permanent school record indicates that his date of birth is November 7, 1959 and that, as of January 14, 1974, he was enrolled in P-58M, located at 317 West 52nd Street in Manhattan. 9. Deny each and every allegation contained in paragraph 11 of the complaint, and affirmatively state that plaintiff Jerome Moore's permanent school record indicates that his date of birth is January 24, 1961 and that, as of May, 1975, he was to be discharged from P-12X located in the Bronx for promotion to P-58M,/SMED high school, located in Manhattan. As of September, 1975, Jerome Moore was transferred to District 9 for placement in a Bureau of Child Guidance ("BCG") special class. 10. Deny each and every allegation contained in raragraph 12 of the complaint, and affirmatively state that plaintiff Lawrence White's permanent school record indicates

-53-

that his date of birth is May 24, 1962 and that, as of February 27, 1974, he was enrolled in P-75Q, located at 1666 Hancock St. Ridgewood in Queens. 11. Deny each and every allegation contained in paragraph 13 of the complaint, and affirmatively state that plaintiff Melvin Prince's permanent school record indicates that his date of birth is April 17, 1959 and that, as of April 24, 1975 he was discharged on a full-time Employment Certificate from P-58M, located at 317 West 52nd Street, in Manhattan. 12. Deny each and every allegation contained in paragraph 14 of the complaint, and affirmatively state that plaintiff Francisco Lugo's permanent school record indicates that his date of birth is November 4, 1959 and that, as of June 24, 1975 he was graduated from P-82M located at 371 Madison St. in Manhattan to P-58M located at 317 West 52nd Street in Manhattan. 13. Deny each and every allegation contained in paragraph 15 of the complaint and affirmatively assert that this action is not a proper class action. 14. Admit those allegations contained in paragraph 17 of the complaint and respectfully refer the Court to Section 2590g of the Education Law of the State of New York which sets forth a statement of the powers and duties of the City Board. It is noted to the Court that defendants -54Robinson and Christen are the current President and Vice-President of the City Board.

- paragraph 18 of the complaint except admit that defendant
 Albert Budnick is Director of the Bureau for the Education
 of Socially Maladjusted and Emotionally Disturbed Children
 ("SMEDC") in the Division of Special Education and Pupil
 Personnel Services ("DSEPPS") of the City Board and he has
 administrative responsibility for the operation of all SMED
 schools within the City Board's jurisdiction; he maintains
 his office at 110 Livingston Street, Brooklyn, New York 11201.
- paragraph 19 of the complaint except admit that defendant
 Helen Feulner is Executive Director of the Division of
 Special Education and Pupil Personnel Services of the City
 Board and has administrative responsibility for all special
 education programs and services offered by the City Board
 including but not limited to the SMED shools; she maintains
 her offices at 110 Livingston Street, Brooklyn, New York 11201.
- paragraph 20 of the complaint and affirmatively state that defendant paster was the "acting" Director of the Bureau of Child Guidance (BCG) in the director's absence. The Court is respectfully referred to the Board of Education By-Law 46 (a copy of which is attached hereto as Exhibit "C") for

a full statement of the powers and duties of BCG within the city public school system. It is admitted that BCG maintains an office at 162 West 32 Street, New York, New York. 18. Deny each and every allegation contained in paragraph 21 of the complaint except admit that defendant Irving Anker is the Chancellor of the City Board and maintains his offices at 110 Livingston Street, Brooklyn, New York 11201, and respectfully refer the Court to Section 2590-h of the Education Law of the State of New York for a full statement of the powers and duties of the Chancellor of the City Board. 19. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 22 of the complant except admit that defendant Ewald Nyquist is Commissioner of Education of the State of New York. 20. Deny each and every allegation contained in paragraph 23 of the complaint and affirmatively state that defendant Irwin Shanes is principal of P-75Q, a SMED school for boys containing grades five through nine; that defendant Max Vogel is principal of P-9-Q, a SMED school for boys containing grades five through eight; that defendant W. Harold Baugh is principal of P-4-Q, a SMED school for boys containing grades five through eight; that defendant David Malachowsky

-56-

grades five through eight; that defendant Herbert Diamond is

is principal of P-371-K, a SMED school for boys containing

principal of P-370-K, a SMED school for boys containing grades five through eight; that defendant Coy Cox is principal of P-369-K, a SMED school for boys containing grades five through eight; that defendant Dorothy Willis is principal of P-141-K, an ungraded SMED school for girls between ages thirteen and seventeen; that defendant Marjorie Louer is principal of P-85-K, an ungraded SMED school for boys between ages fourteen and nineteen; that defendant Martin Graveman is principal of P-36-K, a SMED school for boys containing grades five through eight; that defendant Stanley Snitkoff is principal of P-12-X, a SMED school for boys containing grades five through eight; that defendant Edmond Jones was principal of P-148-M, a former SMED school for boys containing grades seven and eight; that defendant Jud Axelbenk is principal of P-91M, an ungraded SMED school for boys ages fifteen through nineteen; that defendant Joseph Del Barto is principal of P-82M, a SMED school for boys containing grades five through nine; that defendant George Goggins is principal of P-58M, a SMED school for boys containing grades nine through twelve; that defendant Esther P. Rothman is principal of P-8M, a SMED school for girls containing grades seven through twelve; that Estelle Schwartz is principal of P-185X, a SMED school for boys containing grades five through eight; that Dennis Hayes is principal of P-169-M, a SMED school for boys containing grades five through eight; that as such, these

defendants participate in the referral-discharge process for the SMED schools along with other City Board agencies and divisions and/or supervisory personnel and they are responsible for the administration and supervision of the educational program within their respective SMED schools. 21. Deny each and every allegation contained in paragraph 24 of the complaint and affirmatively state that defendant Nicholas Cicchetti is the community superintendent of Community School District 11 whose powers and duties are spelled out in Section 2590-f of the Education Law of the State of New York to which this Court is respectfully referred. Defendant Cicchetti as community superintendent had occasion to approve a referral of Isaac Lora to a SMED school dated June 8, 1973 and initiated by Isabel McNabb, then principal of PS 41X located in the Bronx. 22. Deny the allegations contained in paragraph 28 of the complaint but affirmatively state that the Community Superintendent of District 29 had occasion to approve a referral of Lawrence White to a SMED school, initiated by the principal of Public School 1380 in District 29. It is admitted that defendant Marvin Aaron is the Community Superintendent for District 27 but he took no part in the above described referral. 23. All it the allegations contained in paragraph 29 that James 30ffman is Assistant High School Superintendent -38for Manhattan and as such is responsible for the operation and policies of high schools within his jurisdiction but affirmatively state that in his absence, the Acting Assistant High School Superintendent acted to approve the transfer of Francisco Lu o from Julia Richman High School to P-82M.

- Admit the allegations contained in and paragraph 32 of the complaint,/affirmatively state that Sylvia Ballat is the principal of Julia Richman High School in Manhattan.
- 25. Deny each and every allegation contained in paragraph 33 of the complaint and affirmatively state that Gerald Starr no longer is Dean of Boys at Erasmus Hall High School.
- 26. Deny the allegations contained in paragraph
 35 of the complaint except to admit that Robert Klenosky is
 the Guidance Counselor at P-4Q, a special day school in
 Queens, in which plaintiff Lawrence White was in placement.
- 27. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 36, 37 and 38.
- 28. Deny the allegation contained in paragraph 39 of the complaint which states that Lawrence White is a student in defendant Frost's class.



29. Admit the allegations contained in paragraph
40 but state that defendant Olin is no longer employed as a
teacher at P 12X.

30. Deny each and every allegation contained in paragraph 41 of the complaint except admit that plaintiffs purport to bring this action as a class action.

31. Deny each and every allegation contained in paragraph 45 of the complaint and respectfully refer the Court to Section 3214 of the Education Law of the State of New York for the full text and content thereof.

32. Deny each and every allegation contained in paragraph 46 of the complaint and affirmatively state that as of May 31, 1975 there were approximately 2950 children in eighteen SMED schools* under the control of the Bureau for the Education of Socially Maladjusted and Emotionally Disturbed children of the City Board.

paragraphs 47, 48 and 49 of the complaint and respectfully refer the Court to the Chancellor's "Special Circular No. 47" (attached hereto as Exhibit A for its full text and content).

^{*} It should be noted that P 148M is no longer a SMED school.

34. Deny each and every allegation contained in paragraphs 51 and 52 of the complaint and affirmatively state that as a result of three months of conferences between principals, BCG personnel and the Task Force Committee on Programs for Socially Maladjusted and Emotionally Disturbed Children, a new proposed circular was drafted to replace Special Circular No. 47, 1972-73, on Screening Procedures For Socially Maladjusted and Emotionally Disturbed Children. The Court is respectfully referred to Exhibit B (attached hereto and made a part hereof) for the full text and concent of this proposed circular which embodies the new procedures for placement. 35. Deny the allegations contained in paragraph 53 of the complaint and respectfully refer the Court to Exhibit B, subdivisions 1.6, 1.7, 1.11, 2.6, 3.8, 3.9, 4.1, 4.2, 6). 36. Deny the allegations contained in paragraph

36. Deny the allegations contained in paragraph
56 of the complaint and affirmatively assert to the Court
that it has been the practice to obtain parental consent
to placement in a SMED school and, in fact, the new proposed
special circular, attached hereto as Exhibit B (subdivisions
1.4, 1.8, 2.4, 3.5) which will replace Special Circular 47,
mandates parental consent before SMED school placement can be
offected. Presently, every referred child and parent or

guardian has an interview with the principal of the SMED school and tours the school. The referred child and parent are permitted to observe classes in session, to discuss the school with students attending the school and to confer with their friends and relatives. If either the child or the parent does not agree on the SMED school placement, the principal of the SMED school will not accept the child and will refer the child back to the sending school or district for alternative action.

- 37. Deny the allegations contained in paragraph 58 of the complaint and affirmatively assert that approximately eight or nine years ago the SMED school separate numbering ("600" schools) was abandoned and the designation of those schools now follows the city wide regular school pattern. Thus, the school number and the child's records show no indication of special school involvement. When a special school child is returned to the regular school, his prior placement is not made known to his new teacher or his peers.
- 38. Deny the allegations contained in paragraph
 59 of the complaint except admit that the ethnic breakdown
 of the approximate 2950 students in SMED schools as of May
 31. 1975 is 64% Black, 28% Puerto Rican and 8% other Spanish

Americans surnamed/and others. It is affirmatively asserted that the SMED schools are just one segment of the entire Division for Socially Maladjusted and Emotionally Disturbed Children programs which as of October 31, 1974 had an enrollment of 7147 students with an ethnic breakdown as follows:

	SMEDC	No. of children
Black	51.5%	3679
Amer. Indian	0%	2
Oriental	1.2%	14
Puerto Rican	28.7%	2050
Spanish Surnamed	1.4%	100
Other	18.2%	1302
	100%	7147

It is also asserted to the Court that the city wide ethnic breakdown for all schools is as follows:

	%	No. of children
Black	36.6%	403,064
Amer. Indian	.1%	577
Oriental	2.1%	23,252
Puerto Rican	23.0%	253,452
Spanish Surnamed	4.9%	54,392
Other	33.2%	365,487
	100%	1,100,224

- 39. Deny the allegations contained in paragraph 60 of the complaint and affirmatively state that between June 1, 1974 and May 1, 1975 approximately 20% or 466 students were returned to a regular New York City school ("mainstreamed") from a SMED school. It should be noted that the five (5) special high schools (P 85K, P 91M, P 58M, P 141K, P 8M) do not generally grant high school diplomas. Rather, these schools return a child to a regular school for graduation purposes. The receipt of diplomas by such children will not be statistically credited to the special day school. During the 1974-75 school year, the SMED schools granted ten (10) high school diplomas in their own names and referred approximately 200 children to regular high schools (10th through 12th grades).
- of the complaint and affirmatively state that a large percentage of children who enter the SMED schools have serious to moderate reading disabilities and that in the SMED school program for the 1974-75 school year approximately 33 1/3% or 1064 children out of a SMED school population of approximately 2950 improved their reading ability by one-half to one year or more.

41.-42. Deny the allegations contained in paragraph 62 of the complaint except admit that the Special Education program of the New York City Board of Education is under the centralized control of the City Board and is not part of the decentralized community school districts and affirmatively state that there are presently seventeen (17) special day schools in the City of New York, five in Manhattan, two in the Bronx, six in Brooklyn and four in Queens. The basic considerations in selecting the individual special school to be attended by a child is the factor of travel time and distance, as well as, space and grade level availability. Clearly, some travel will be required by most students since there is not a compliment of special schools (elementary, junior high and high schools) in each community school district.

- 43. Deny the allegations in paragraph 63 except admit that of the seventeen SMED schools, two schools are for females and affirmatively state that the determination to maintain the separate schools for males and females is based upon sound educational reasoning.
- 44. Deny the allegations contained in paragraph 64 of the complaint and affirmatively state that the defendants have no policy of regularly searching students either as they enter the buildings, enter their classrooms or at any other time.

- 45. Deny each and every allegation contained in paragraph 65 of the complaint and affirmatively state that defendants have no policy of direct or tacit approval for use of corporal punishment. It should be noted that there have been occasions when school personnel have intervened to stop a physical confrontation among two or more students.
- 46. Admit the allegations contained in the first sentence of paragraph 67 and affirmatively state that as of February, 1976 all teachers will be required to be certified to teach special education. Admit the second and third sentences. Deny the fourth sentence and affirmatively state that the SMED school provides a total therapeutic environment. The SMED school population averages approximately 175 children per school with a student/staff ratio of approximately 6.7 to 1 and with intensive remedial reading, math, tutorial, and special interest programs. Each student becomes known to and knows each teacher and staff member at his school. This constant and intensive interaction laced with the regular involvement of clinical personnel from BCG provides a comprehensive educational and therapeutic environment.
- 47. Deny each and every allegation contained in raragraph 65 of the complaint and affirmatively state that [case Lora's school placement record is as follows:

- a) 9/68 first grade enrolled in 89X
- b) 11/68 inter-class transfer within 89%
- c) 10/70 inter-class transfer within 89%
- d) 6/71 inter-class transfer within 89%
- e) 9/72 moved entered 85X
- f) 12/72 moved entered 41X
- g) 3/73 inter-class transfer within 41x
- h) 3/73 inter-class transfer within 41X
- i) 10/73 transferred to 12X
- 48. Deny the allegations contained in paragraphs 69 and 70 and affirmatively state that the Guidance and Supervisory personnel at P 41X had extensive contact with Isaac Lora and his family in an effort to resolve the child's problems at P41X and to permit him to continue his education at that school. During one week in June, 1973

 Isaac Lora was on a five day Superintendent's suspension.

 His mother was advised by school personnel that a SMED school placement was available for Isaac and she, in fact, visited p12X, a SMED school, on two occasions prior to her consent to such placement and she encouraged such placement.
- 49. Admit the allegations contained in paragraph
 71 of the complaint that Isabel McNabb, then principal of
 41, recommended on June 8, 1973 that Isaac lora be transferred to 1 12% because of rejeated pattern of aggressive

behavior, and that Nicholas Cicchetti, community school board superintendent for District 11, approved said recommendation on October 9, 1973. 50. Deny the allegations contained in paragraph 72 of the complaint and affirmatively state that a due process evidentiary hearing is not a mandated part of the SMED schools placement process. City defendants respectfully refer the Court to paragraph 36, supra, of this answer for a complete statement of the procedures by which a child, parent, guardian or others may review, evaluate and accept or refuse a SMED school placement. 51. With regard to the allegations contained in paragraph 73 of the complaint, city defendants affirmatively state that as of June 1975, the ethnic population of P-12X, an all boys school, was as follows: One hundred and nine Black students; sixty Puerto Rican students; twenty-two other Spanish surnamed Americans and other students. City defendants respectfully refer the Court to paragraph 38 supra of this answer for a more complete discussion of the racial composition of the SMED schools. 52. Deny the allegations contained in paragraph 74 of the complaint. It is affirmatively stated that the entry and exit doors to P 12% are, at all times, open to students and to the ublic. If a weapon is observed in the possession -68of any child, said child will be asked to give it up or, in the alternative, it will be taken by the teacher and given to the principal. Further, all children and, especially, any child who has had a recent argument or altercation with another student will be asked if he has a weapon and, if so, to turn it over to the teacher, If a teacher or staff member is advised by a student or other person that a child has a weapon with him, the teacher will speak with the child and attempt to persuade the child to hand over the weapon, if one exists. There is no policy or general practice at P 12X whereby a teacher or staff member is permitted to physically strike a student attending the school. It should be noted that on several occasions throughout the school year, a teacher or staff member may have to step in and break up a fight between students and some force may be required to separate the individuals involved.

of the complaint and affirmatively state that from February 1974 to June 1974, Isaac Lora was in a therapy group of three boys which met weekly with a school psychologist. In September of 1974 Isaac was assigned to a student social worker at the school who had regular contact with him and also had contact with his mother. In October and November of 1974, Isaac's mother and teacher also had several conferences. In December of 1974 Isaac was sent by the Family Court, pursuant to a

-69-

center for observation. At Pleasantville, a complete psychological evaluation of Isaac was done. When Isaac returned to P 12x in January, 1975, a school social worker continued to see him on an individual basis through the end of May, 1975.

Isaac also participated in a small therapy group of three students commencing in March, 1975.

54. Deny the allegations contained in paragraph
76 of the complaint and affirmatively state that P-12X has
an extensive educational program specifically designed to
enhance reading and math skills by the use of sophisticated
remedial reading labs and mathematics instruction administered
by trained teachers with the aid of paraprofessionals and
student interns. While the basic subjects are taught at
P-12X, the curriculum is such that special emphasis and
individual attention may be focused in one or more areas of
education at various intervals in the school year. Teaching
aides, such as film, reading machines, taxonomical material,
are also used to provide an educational program which will
cover the basic areas of learning and will permit sufficient
fluidity to capture the interest of as many students as

-70-

Issac Lora was given a full educational diagnosis at P-12X with special concern for his reading and mathematics progress. A reading profile was developed for this child and in addition to his regular reading lab program, consisting of 6 periods per week plus his regular classroom reading instruction, Isaac Lora was enrolled in remedial reading on a 2X per week basis since October, 1974. From September, 1974 to April, 1975, Isaac Lora has gained five months in reading ability.

55. Deny the allegations contained in paragraph
77 of the complaint and affirmatively state that Kelvin Walter's
school placement record is as follows:

a) 9/64 enrolled in kindergarten in P 191K

b) 9/66 transferred to P 179K

e) 9/67 interclass transfer within P 179K

1) 3/69 interclass transfer within P 179K

e) 1/70 interclass transfer within P 179K

f) 6/71 promotion to J.H.S. 62K

q) 6/72 transferred to P 222K

h) 12/72 transferred to P 227K

1) 3/28/72 transferred to P 232%

9/74 transferred to Erasmus H.S.

11/7/74 admitted to Wingage H.S.

12/3/74 transferred to P 91%

paragraphs 78,79 and 80 of the complaint and affirmatively state that on May 22 and 23, 1974 incidents occurred which resulted in Kelvin Walter being placed on a superintendent's suspension as of May 29, 1974. A registered letter and a Mailgram, both dated May 28, 1974, were sent to Mrs. Walters to notify her of the suspension. By registered letter dated May 29, 1974, the Supervising Assistant Superintendent notified Mrs. Walters that a Guidance and Suspense hearing/to be held on June 4, 1974 and of the allegations of misbehavior which were the subject of such hearing. By letter dated June 5, 1974, Mrs. Walters was requested to contact the Hearing Officer for a rescheduling since she did not attend the June 4 hearing. Mrs. Walters did not contact the Hearing Officer until October 3, 1974.

In addition, in September, 1974 Kelvin received a card from Erasmus High School which merely reflected Kelvin's retention on the pupil rolls pending the outcome of the suspension hearing.

Mrs. Walters was previously informed by letter dated June 5, 1974 that Kelvin was not to attend school until the suspension hearing was held. The suspension hearing was conducted on October 8,

, . Deny each and every allegation contained in

paragraph 81 of the complaint and affirmatively state that a Guidance and Suspense Hearing was held on October 8, 1974.

Mrs. Walters had been informed at the time of the first scheduling of said hearing that the rights to counsel, to request and to cuestion witnesses were available. The findings of the Hearing Examiner regarding the incidents of May 22 and 23, 1974 and the recommendation that Kelvin Walters be placed in a Special School were communicated to Mrs. Walters by letter from the hearing officer dated October 10, 1974.

58. Deny the allegations contained in paragraphs 82 and 83 of the complaint and affirmatively state that on October 8, 1974 a Guidance and Suspense Hearing was held regarding Kelvin Walters and the decision of the Superintendent, defendant Groisser, was that Kelvin attend P 91 M, a SMED school located in Manhattan, due to Kelvin's need for a structured school situation. Furthermore, on or about October 21, 1974, Kelvin was scheduled to have an interview at P 91M, which appointment he failed to keep. On information and belief, his mother attempted to enroll Kelvin at Wingate High School on November 7, 1974. By letter of December 2, 1974, Mrs. Walters was informed that pending her appeal to the Chancellor, Kelvin was to attend P 91M. On December 17, 1974, Mrs. Walters,



admission interview and tour. By letter dated December 18, 1974, Mrs. Walters was informed that Kelvin was accepted for placement at P 91M. City defendants also affirmatively state that a due process evidentiary type hearing is not a mandated part of the SMED school placement process and respectfully refer the Court to paragraphs 35 and 36, supra, of this answer for a complete statement of such placement procedures.

59. Deny the allegations contained in paragraph
84 of the complaint exceptadmit that the staff at P 91M escort
the students to their transporation facilities and give each
child his return fare for the next morning, and affirmatively
state that Kelvin Walters does not regularly attend school.
His attendance record at P 91M indicates that he was absent
160 days during the six month period in which he was enrolled
there. City defendants affirmatively state that as of June 1975,
the ethnic opoulation of P 91M, an all boys school, was as
follows: One hundred Black students; forty three Puerto
Rican students and one other Spanish surnamed American or other
student. City defendants also state that the boys in attendance
at P 91M are asked each morning to deposit wearons they have on
their person with school officials. In fact, this procedure

60. Deny the allegations contained in paragraph 85 of the complaint and affirmatively state that P 91M provides a full academic high school program, in addition to its special program which includes intensive reading and math remediation, woodworking, metal working, graphic arts and printing, radio-TV repairs, ceramics and fine arts. In addition, P 91M has a trip program, inter-scholastic sports program and physical education. P 91M has a full time guidance counselor, a social worker and a psychologist each two days a week and a psychiatrist on call. 61. Deny the allegations contained in paragraph 87 of the complaint and affirmatviely state that Ranjeet Martin's school placement record is as follows: kindergarten enrolled in 920 9/64 a) attended "paired" school 1490 (ci 9/67 promoted to 1450 6/70 C) discharged to P203M 3/73 (L enrolled at Newtown H.S. 9/73 e) discharged to P58M Ī) 1/74 1/74 - 6/74 3 interclass transfers within P 58M 9) 9/74 transferred to high school return class at P 58M 11)

i) 4/75 transferred to regular class at P 58M

62. Deny each and every allegation contained in

paragraph 88 of the complaint and affirmatively state that according to Ranjeet Martin's Guidance Record at Newtown High School Annex, on December 11, 1973, when told not to enter the building through certain doors, Ranjeet Martin threatened to assault a school dean.

63. Deny the allegations contained in paragraph 89 of the complaint and affirmatively state that due to Ranjeet Martin's constant disruption of classes and repeated behavior problems at Newtown High School, he was recommended for transfer to P 58M, a SMED school, by the principal of Newtown High School, Mr. Joseph Weintraub. On December 12, 1973 the Assistant Principal in Charge of the Newtown High School Annex interviewed Ranjeet's father, who agreed to visit the Manhattan School for Boys and decide whether to consent to Ranjeet's placement there. On December 19, 1973, Mr. Martin signed a consent for such transfer. On or about January 14, 1974, Ranjeet Martin was transferred to P 58M with the approval of Abraham Wilner, Assistant Superintendent of High Schools. Prior, while at Newtown High School. Ranjeet Martin had been seen by the school quidance counselor on a number of occasions and was referred to and diagnosed by a Bureau of Child Guidance social worker and sychologist. Further, while at Newtown High School, several parental conforences, conducted by the Assistant Principal and the Dean, were hid concerning Ranjact Martin's behavioral

difficulties at school. It was not until all this failed that

Ranjeet Martin was referred for placement in a SMED school.

64. Deny each and every allegation contained in

paragraph 90 of the complaint and affirmatively state that a due

process evidentiary hearing is not a part of the SMED school

to paragraphs 35 and 36, supra, of their answer for a complete

placement process. Defendants respectfully refer the Court

statement of such placement procedures.

paragraph 91 of the complaint and affirmatively state that Ranjeet Martin was first referred to BCG in February, 1972 while in the 7th grade at I.S. 145 Q. At that time he was tested by a psychologist and interviewed by a social worker who referred Ranjeet's mother for counselling to a Child Guidance Center in Queens. While at Newtown High School Annex, Ranjeet received extensive counselling attention in that he was seen regularly by the Guidance staff, referred to a BCG social worker as of November 1973, and referred about twenty times to Dean's Office between September 1973 and December 1973. Ranjeet Martin was transferred to P-58M on 1/14/74.

66. As to the allegation contained in paragraph .

92 of the complaint, City defendants affirmatively state that the stanic population of P 58% as of June 1975 was as follows:

two hundred twenty-four Black students; eighty Puerto Rican students; twelve other Spanish surnamed American students and three other students.

a belief as to the truth of the allegations contained in the first sentence of paragraph 93 of the complaint except admit on information and belief that Ranjeet Martin lives in Queens. Deny the remaining allegations in paragraph 93 of the complaint and affirmatively state that there is no policy which permits or encourages either the searching of students or the use of physical force to discipline students. It should be noted that students are encouraged by the teachers to turn in any weapons which they might have in their possession. Further, if a weapon is seen in the possession of a student, the teacherswill ask the child to give it up or will take such weapon and give it to the principal. The use of physical force by a teacher other than to separate boys engaged in a fight is strictly forbidden.

of the complaint and affirmatively state that Ranjeet Martin while attending P 58 Ma SMED school, was assigned in September 1974 to a high school return class (HSR) where he remained until Arril 16, 1977, when he was transferred back to a regular class

at P 58M. During the period from September 1974 to June 1975, Ranjeet Martin was absent from school 23 days and late 67 days. It was this poor attendance and punctuality record coupled with the fact that the rest of the class was preparing for the high school equivalency test, for which Ranjeet did not qualify due to age, which precipitated his transfer out of the HSR class. RAnjeet's academic program in a regular class at P 38 M includes intensive reading and math instruction utilizing sophisticated lab machinery and testing devices, instruction in social studies, music, science, physical education and participation in several special programs such as woodshop, general machine shop, automechanics, art and ceramics. Every child in P 58M carries a full academic program and a child's special interest in a particular area will be explored and the child will be assigned to a special program which best fits that child's interest. These special programs are in conjunction with academic aubjects, not in lieu thereof.

of the complaint and affirmatively state that while Ranjeet was enrolled at P 58M, he was referred by the school's guidance couselor to BCG. The BCG social worker saw Ranjeet weekly for approximately two months, spoke with his parents twice in person and had frequent conferences with Ranjeet's teacher. During the

1974-75 school year, the BCG social worker continued to have constant contact with Ranjeet and was in contact with his family on the average of twice a month. Ranjeet was also seen by a sychiatrist at a medical group in Queens in February and March of 1974.

70. Deny knowledge information sufficient to form a belief as to the truth of the allegation contained in the first sentence of paragraph 96 of the complaint, and deny the allegations contained in the second sentence and affirmatively state that there is no indication on a child's permanent school record that a school is a SMED or a regular school and that neither teachers nor other school personnel at the regular school are informed that a child is entering from a SMED school. City defendants further note that for the school year ending June 1975, one hundred eight (108) students from P 58M were returned to mainstream high schools, ninety-four (94) of which were returned to academic high schools. City defendants further deny the allethe second sentence of gation in/paragraph 96 that Ranjeet would be academically inferior, if returned to a regular high school and affirmatively state that P 58M has a regular high school program, in addition to its special programs. City defendants respectfully refer the Court to paragraph 68, supra, of this answer for a complete statement as to the academic program at P 58M.

71. Deny each and every allegation contained in paragraph 97 of the complaint and affirmatively state that Jerome Moore's school placement record is as follows: 7/66 entered 51X (Head Start) interclass transfer within 51X 7/66 b) 11/68 interclass transfer within 51% c) 2/69 entered 60X (ic 11/71 interclass transfer 60X e) 11/72 transferred to AAUE f) 2/72 transferred to 146X g) 3/72 transferred to AAUE h) transferred to 39X 3/72 i) 4/72 transferred to 12X j) 10/74 interclass transfer within 12X K) 6/75 promoted to 58M 1) transferred to District 9 for placement in CEH 9/75 m) 72. Deny the allegations contained in paragraph 98 of the complaint and affirmatively assert that Jerome Moore was recommended for referral to P-12-X, a SMED school, by Henry Schechtman, principal of P60X and approved on March 9, 1972 by William Dorney, the Assistant Superintendent of Community School District No. 8. 73. Deny each and every allegation contained in -81paragraph 99 of the complaint and affirmatively state that the history of Jerome Moore's school behavior prior to his placement at 12X is replete with incidents of disruptive aggressiveness which resulted in numerous contacts between his parents, guidance counselor and other school personnel, and included a home visit and referrals to BCG and to an outside agency.

- 74. Deny the allegations contained in paragraph
 100 of the complaint and affirmatively state that a due process
 evidentiary type hearing is not a mandated part of the SMED
 school placement process.
- of the complaint and affirmatively state that SMED schools are intended to educate and assist emotionally disturbed and socially maladjusted children who are often prone to acting out their difficulties in coping with the school environment. These outbursts are expected and handled by the SMED school personnel in an understanding and therapeutic manner. No policy of corporal punishment exists at P 12X and none is encouraged. No policy of searching students who attend P 12X exists and none is encouraged.
 - 76. With respect to the allegations in paragraph 103 of the complaint, City defendants affirmatively state that the ethnic regulation of P 12X as of April 1975 was as follows:

one hundred nine Black students, sixty Puerto Rican students and twenty-two other Spanish surnamed American and other students.

77. Deny knowledge or information sufficient to

- 77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 104 of the complaint.
- 78. Deny the allegations contained in paragraph 105 of the complaint and affirmatively state that Lawrence White's school placement record is as follows:
- a) 9/68 first grade enrolled in P 340
- b) 10/72 moved, entered P 138Q
- c) 3/73 moved, entered P 40
- d) 2/74 transferred to P75Q

Ì

- 79: Deny the allegations in the 1st sentence of paragraph 106 and admit the allegation contained in paragraph 106 of the complaint that Lawrence White was not known to BCG prior to his transfer to P 4Q, a SMED school, however, affirmatively state that at that time, he had been known to outside treatment agencies.
- and 110 of the complaint and affirmatively assert that P 40 is a SMED school for boys and has a racial composition as of May 31, 1975 of 122 30 ck, 16 Puerto Rican and 22 Other Spanish surnamed and Others. The physical plant at P 40 is a very old structure

which is maintained in a clean and functional condition despite its age. The entry doors to P 40 are open for both entrance and exit. Some of the side doors which are primarily designed for exit have safety locks which permit exit at any time but do not permit entry. The classroom doors have locks which will bar entry into a class while it is in session but these locks are not capable of barring exit from the classroom. There is no policy of corporal punishment in effect at P 4Q and none is encouraged. Further, all staff are forbidden from using corporal punishment at any time. No policy of searching students exists at P 4Q and none is encouraged. Students are asked by teachers to turn over any weapons which they might have on their person and any weapon observed by staff to be in the possession of a child will taken from the student. The academic program at P 4Q includes the normal array of academic subjects with special emphasis on reading and mathematics and a large assortment of special programs and projects designed to draw the student's interest to learning. Every child upon entering P 4Q is pre-tested in reading and matheratics and a program is designed for that child based on the results of that test, e.g., a particular reading b program is assigned to deal with that child's individual soblem. Every child participates in ten (10) periods per spek of read as instruction with at least three lab periods per OR. As of the 31. 1975 of a total student of ulation of 160

- 3 ---

at P 4Q, 36 students progressed in reading by 1 year or more, 26 students progressed in reading by 6 to 12 months and 34 students progressed in reading from zero to 6 months. Mathematics instruction is scheduled five times per week with basic skills as its main emphasis. Individualized math programs are designed for each child's needs. In addition to the academic program at P 4Q special subject areas in health education, woodworking, music, science, physical education, general shop and library are offered and students develop worthwhile commitment and skills in these programs. It should be noted that Lawrence White's absenteeism level at P 4Q and at P 75Q is as follows:

Period

No. of Days Absent

March, 1973 - June, 1973

70 days

(at P 4Q)

September, 1973 - February, 1974

106 days

(at P 750)

February, 1974 - June, 1974

September, 1974 - June, 1975

66 27/2 days

Lawrence Whites's high absenteeism and excessive lateness despite efforts by school staff to encourage his attendance and punctuality is in large part the cause of his limited educational success at S...) schools, P 40 and P 750.

8 . Deny the allegations contained in paragraph 108 of the complaint and affirmatively state that on February 27,

1974 Lawrence White was transferred to P 75Q, a SMED school for boys in grades 5-8, located in Queens. City defendants affirmatively state that a due process evidentiary hearing is not a mandated part of the SMED school placement process and respectfully refer the Court to paragraph 36, supra, of this answer for a complete statement of the procedures by which a child, parent, guardian or other person may review, evaluate and accept or refuse a special day school placement. City defendants also affirmatively state that the ethnic population of P 75Q as of June 1975 was as follows: One hundred five Black students, twenty-seven Puerto Rican students, five other Spanish surnamed American students, one American Indian student and twenty-three Other students.

82. Deny each and every allegation contained in paragraph 111 of the complaint and affirmatively state that as of September 22, 1975 Lawrence White was transferred to P 2020 a regular school in District 27.

82a. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 112 of the complaint except to affirmatively state that Melvin Prince's school placement record is as follows:

- e 9/65 first grade enrolled in 1360
- b) 9/72 promoted to 192 0
 - 5/73 transferred to F 82M

- d) 9/73 graduated to P 58M
- e) 11/73 discharged to Youth House
- f) 1/75 re-entered from Youth House to P 58M
- g) 4/75 discharged on Employment Certificate
- graph 113 of the complaint and affirmatively state that Melvin Prince's attendance record at P 58M between his re-entry in January 1975 and his discharge on Employment Certificate in April 1975 was as follows: present: 17 days, absent: 53 days, late: 10 days. City Defendants also affirmatively state that P 58M has a regular high school academic program consisting of social studies, English, math, science and physical education. In addition its specialized program includes music, wood workshop, auto shop, art and ceramics, general mechanics workshop as well as extensive remedial reading and remedial math programs, including reading and math labs.
- 84. Deny knowledge or information sufficient to form a belief as to the allegation contained in paragraph 114 which alleges that defendant Rios, a Division For Youth aftercare worker, was involved in the transfer of Melvin Prince from JHS 1920 to P 58M, a SMED school, and affirmatively assert that delvin Prince was referred for transfer to a SMED school by william Harris, the principal of JHS 1920 due to the child's ex-

treme aggressiveness and disruptive behavior. On April 24, 1975 the child was discharged from P 58M on an employment certificate.

85. Deny the allegations contained in paragraph 115 of the complaint and affirmatively state that since his re-entry to P 58 M in January 1975, Melvin Prince was in full attendance at school only 17 days. City defendants affirmatively state that the regular staff at P 58 M includes a full-time guidance counselor, a psychologist and a social worker, each twice a week, and a psychiatrist who is on call. This team works directly with the students. Any student may see the guidance counselor at any time upon request to his homeroom teacher.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 116, except admit, upon information and belief, that Melvin Prince resides in St. Albans, Queens. Deny the allegations contained in the second and third sentences of paragraph 116 and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth mentence in paragraph 116 and affirmatively state that no policy of searching students or using corporal punishment either exists or is encouraged.

of the complaint and affirmatively state that theethnic popula-



twenty-four Black students, eighty Puerto Rican students, three other Spanish surnamed American students, and twelve other students. City defendants respectfully refer this Court to paragraph 83, supra, for a complete statement as to the special programs available at P 58M and note for the Court that the school has both an auto mechanics shop and a driver training program, to provide Melvin with the type of program recommended by the principal of Youth House upon Melvin's discharge therefrom in November 1974.

88. Deny the allegations contained in paragraph 118 of the complaint and affirmatively state that plaintiff Lugo's school placement record is as follows:

- a) 9/64 enrolled in kindergarten at 78M
- b) 9/69 promoted to 206M
- c) 11/70 moved, entered 202K
- d) 1/70 moved, entered 206M
- e) 9/27/71 interclass transfer within 206M
- f) 5/71 5 day suspension from 206M
- g) 11/71 interclass transferwithin 206M
- 11/71 transferred to 4010
- in 4/18/72 inverclass transfer within 4010
 - 6/72 promoted to 213K

interclass transfer within 218K k) 12/72 moved, entered 45M 2/73 1) transferred to 77M 3/73 transferred to 45M 9/73 graduated to Julia Richman HS 6/74 transferred to 82M 1/75 graduated to P 58M 6/75 entered P 58M 9/75 89. Deny the allegations of paragraph 120 of the complaint and affirmatively state that Francisco Lugo was seen by the guidance counselor and family assistant at Julia Richman High School, each of whom attempted to deal with the child's problem. Despite efforts to enhance this child's adjustment at Julia Richman, his disruptive and often dangerous behavior precipitated a referral to a SMED school. Prior to his transfer to P 82M, a SNED school, the child and guardian were interviewed by Mr. Del Barto, principal of P 82M. The child and his guardian were informed of the program at P 82M and were given a tour of the building. If either the child or the guardian refused the admitted and he would have been placement, the child would not/ returned to the sending school for alternative action. Francisco ugo and his guardian consented to the placement. 90. Deny the allegations of paragraph 121 of the complaint which allege that Francisco Lugo received no thera--90peutic couseling at P 82M and affirmatively assert that just four days after his admission to P 82M, the child was seen by the guidance counselor at that school and referred to BCG which became active on his case. The staff at P 82M in an effort to meet the child's need for individualized attention and on the advice of the school guidance couselor devised a one-to-one reading and mathematics program for him. At the end of this school year, approximately 80% of Francisco Lugo's class went on to regular high school from the 9th grade at P 82M but, due to a lack of real progress, this child was transferred to P 58M, a SMED school, to continue on the 10th grade level. Defendants also deny the allegation that P 82M offers no special instruction to meet Francisco Lugo's educational needs and affirmatively state that the students at P 82M have available to them general academic instruction for their respective grade level, as well as Industrial Arts, Instrumental Music, Physical Education, Health Instruction, Speech Improvement, Bi-Lingual Language Lab, and intensive, individual and small group remediation in reading and in math. In addition, defendants affirmatively state that P 82M has a trip program aimed at both educational and cultural experience and includes both school wide and individual class trips. In addition to the regular academic and special educational program, P 82M has a bi-lingual guidance counselor. Each

new student at P 82M and his parents are interviewed by the guidance counselor, as well as in some cases by the BCG Social Worker. The BCG team at P 82M consists of a social worker, social worker-in-training, part time psychiatrist, psychologist on call and a mental health worker two days a week. In the 1974/75 academic year, the social worker carried on active case load of 77 (out of 124 students) in addition to organizing and participating in three therapy groups, two for students and one for parents. P 82M has an active parents association which participates in an annual Thanksgiving dinner, as well as an expanded breakfast and lunch program.

- 91. With respect to the allegations in paragraph
 122 of the complaint, defendants affirmatively state that the
 ethnic population of P 82M as of June 1975 was as follows:
 thirty -two Black students, one Oriental student, 79 Puerto
 Rican students, three other Spanish surnamed American students
 and nine Other students.
- 92. Deny the allegations contained in paragraph 123 of the complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegation regarding plaintiff Lugo's hope to attend a regular high school.
- 93. Deny the allegations contained in paragraph 124 of the complaint and affirmatively state that there is no indi-

cation on a child's permanent school record that a school is a SMED school and that neither teachers nor other school personnel are informed that a child is entering regular school from a SMED school.

AS AND FOR A FIRST AFFIMATIVE AND COMPLETE DEFENSE CITY DEFENDANTS ALLEGE THAT:

94. This Court lacks jurisdiction in that the Board of Education and any and all City defendants named in their respective official capacities are not "persons" within the meaning of 42 U.S.C. 1981 or 42 U.S.C. 1983.

AS AND FOR A SECOND AFFIRMATIVE AND COMPLETE DEFENSE CITY DEFENDANTS ALLEGE THAT:

95. Plaintiffs fail to state a claim upon which relief can be granted under 42 U.S.C. 1981, 42 U.S.C. 1983, ox 42 U.S.C. 2000d.

AS AND FOR A THIRD AFFIRMATIVE AND COMPLETE DEFENSE CITY DEFENDANTS ALLEGE THAT:

96. Pursuant to 45 CFR Part 80 et seg., under 42
U.S.C. 2000d et seg., plaintiffs must exhaust specified administrative remedies and they have failed to do so.

AS AND FOR A FOURTH AFFIRMATIVE AND COMPLETE DEFENSE CITY DEFENDANTS ALLEGE THAT:

97. Plaintiffs fail to state a claim upon which relief can be granted under the Fourth, Eight, Thirteenth, or Fourteenth Amendments to the United States Constitution. AS AND FOR A FIFTH AFFIRMATIVE AND COMPLETE DEFENSE, CITY DEFENDANTS ALLEGE THAT: 98. This action is time-barred with respect to any individual referral or placement of any named plaintiff or memeber of any determined class, which referral or placement took place more than four months prior to the commencement of this action. AS AND FOR A SIXTH AFFIRMATIVE AND COMPLETE DEFENSE, CITY DEFENDANTS ALLEGE THAT: 99. At all times and in all respects, City defendants have acted in good faith, in their respective official capacities, and pursuant to statutory authority and the By-Laws of the Board of Eduducation. AS AND FOR A SEVENTH AFFIRMATIVE AND COMPLETE DEFENSE, CITY DEFENDANTS ALLEGE THAT: 100. The SMED school program provides the educational and clinical services required by law to meet the individual needs of the referred students. WHEREFORE, the City defendants respectfully request -94this Court to enter Judgment in their favor dismissing the Complaint, together with costs and disbursements, and granting such other and further relief as to this Court may seem proper.

Dated: New York, New York October 6, 1975

Respectfully submitted,

W. BERNARD RICHLAND Corporation Counsel Attorney for City Defendants Municipal Building New York, New York 10007 566-6377/4146/2192

JOSEPH F. BRUNO
Assistant Corporation Counsel

NANCY E. SIEGEL
Assistant Corporation Counsel

BOARD OF EDUCATION OF THE CITY OF NEW YORK OFFICE OF THE DEPUTY CHANCELLOR

MICHAEL B. ROSEN

November 22, 1972

COUNSEL TO THE CHANCELLOR

RICE INCEMUNITY SCHOOL BOARD CHAIRMEN, ALL SUPERINTENDENTS, EXECUTIVE 110 LDIRECTORS, HEADS OF BUREAUS AND PRINCIPALS OF ALL DAY SCHOOLS

Ladies and Gentlemen:

SCREENING PROCEDURE FOR SPECIAL DAY SCHOOLS FOR SOCIALLY MALADIUSTED AND EMOTIONALLY DISTURBED CHILDREN

(This Circular Supersedes Special Circular No. 8, 1961-1962 on Screening Procedures)

The Special Day Schools for Socially Maladjusted and Emotionally Disturbed Children are an integral part of the New York City School System. Their major purpose involves the social, emotional and educational rehabilitation of children whose needs are such that they cannot be met in the normal setting of a large school, who have demonstrated over a period of time a lack of reasonable self-control, and whose behavior is seriously disrupting the education of large numbers of children in the regular school. In some instances, there will be children who should not be in attendance even in a Special Day School, but should be cared for in facilities for very disturbed children.

In order to serve the best interests of children for whom the Special Day Schools are organized, it is necessary to establish clear procedures for the placement of children in these schools.

1. Criteria for Screening and Referral

- 1. An intelligence level determined by a psychologist which is above that provided for by the program for Children with Retarded Mental Development.
- 2. A history of repeated disruptive and aggressive behavior, extensive in scope and serious in nature, which either endangers the safety of pupils or others, or seriously interferes with learning in the classroom.
- 3. A history of truancy, if coupled with aggressive and disruptive behavior.
- 4. The failure of the pupil to respond to intensive efforts by the home school to help him.

2. Role of the Guidance Coordinator in the Superintendent's Office and the Guidance Counselor in the Referring Day School

- The district guidance coordinator and the referring guidance counselor should assist the Bureau of Child Guidance team by assembling all data pertinent to the referral.
- The district guidance coordinator and the referring guidance counselor should make as many of the contacts as possible with courts, clinics, hospitals and social agencies, etc., so that privileged and confidential reports and other pertinent data may be made available to the clinical team.

(Continued on Reverse Side)

Special Circular No. 47, 1972-,1973

3. Steps in Referral

- The referral to the Special Day School will be initiated by the community superintendent, or the supervising assistant superintendent in the High School office.
- 2. Preliminary screening will be performed by the <u>referring</u> district guidance coordinator or by other appropriately trained professional persons designated by the superintendent.
- 3. All referrals must be approved by the community superintendent, or the appropriate supervising assistant superintendent and sent to the Special Day School principals.
- 4. A complete and up-to-date anecdotal record and all other pertinent data, i.e., copy of cumulative record cards, testing card, health record, and copy of recommendations of the referral agency must accompany the referral to the Special Day School. At the time of the referral, permanent cumulative records should not be included.
- 5. A letter of parental consent should accompany the referral.
- 6. Copies of Bureau of Child Guidance reports for those children tested by the bureau during the previous 3-5 year period should be included.
- 7. Record of court involvement because of overt behavior in or out of school, child neglect or abuse and any drug problem in the home should accompany the referral.
- 8. Before admission to the Special Day School, the principal and guidance counselor of that school must interview the applicant with parent or guardian.
- If there is any doubt concerning the suitability of the referral, the Bureau of Child Guidance team at the Special School should be requested to help the principal resolve the problem.

10. Review of Referrals:

When a referral does not seem appropriate, the referral, together with a covering lett'r stating specifically the reasons for doubt, is to be sent by the Special Day School principal to the superintendent in charge of the Special Day Schools. The superintendent will evaluate the available data vith the community superintendent or supervising assistant superint ident and jointly work out appropriate steps to be taken.

4. Acceptance of Refer od Applicant

The Special Day School principal will notify the principal of the sending school and the superintendent upon the admission of the referred student. All records, not previously forwarded, will then be sent on to the Special Day School.

Very truly yours,

, 1975-76 SPECIAL CIRCULAR NO. BOARD OF EDUCATION OF THE CITY OF HEW YORK DIVISION OF SPECIAL EDUCATION AND PUPIL PERSONNEL SERVICES September 19, 1975 TO: COMMUNITY SCHOOL BOARD CHAIRMEN, ALL SUPERINTENDENTS, EXECUTIVE DIRECTORS, DIRECTORS, HEADS OF BUREAUS AND PRINCIPALS OF ALL DAY SCHOOLS Ladies and Gentlemen: SCREENING PROCEDURES FOR CHILDREN WHO ARE MODITIONALLY HANDICAPPED (This Circular Supersedes Special Circular #47, 1972-73 on Screening Procedures) The Division of Special Education and Pupil Personnel Services has established in all school districts, programs for the emotionally handicapped. These programs include resource rooms for the emotionally handicapped, schools for the socially maladjusted and emotionally disturbed, and Alternative Programs. These special programs provide social and emotional treatment and special. education specific to the needs of the students who have manifested serious emotional problems of psycho-social origin or because of social reaction, and despite all reasonable efforts to accommodate the regular school program to their needs, are seriously handicapped by their chronic inability to cope within a normal school setting. These new procedures comply with Section 200.2 of the Regulations of the Comissioner of Education pertaining to the identification of and provision for students with special handicapping conditions. In order to assure the effectiveness of the program, the following procedural guidelines are presented. 1. PROCEDURES FOR SCREETING AND REFERRAL: 1.1 Students who manifest serious emotional difficulties are to be referred for clinical assessment to the Bureau of Child Guidance worker on the basis of their troubled or troubling behavior. 1.2 The following are among the criteria to be considered for clinical determination of eligibility in special programs for the emotionally handicapped: 1.2.1 Intelligence level which is above that provided for by the Bureau for Children with Retarded Mental Development. 1.2.2 History of repeated maladaptive, disruptive and/or -98-aggressive behavior, extensive in scope and serious EXHIBIT B in nature.

Page Three GUIDELINES FOR STUDENTS FOUND TO REQUIRE PLACEREDT IN CLASSES FOR THE ECOTIONALLY HANDICAPPED: 2.1 Bureau of Child Guidance personnel and Supervisors of Classes for the Emotionally Handicapped will hold regular placement meetings where all clinically eligible referrals, in accordance with the procedures described in Section 1 above, will be discussed with a view towards determining the most appropriate CEH assignment. 2.2 The CEH Supervisor assigned to the district shall be responsible for the placement of the student in a class as soon as possible. 2.3 Students referred for CEH programs will be assigned to an appropriate class according to the school and district which the student attends, insofar as possible. When necessary, however, out of district placements are to be effected, since the CEH Program is a centralized service. No eligible student is to be deprived of placement insofar as seat spaces are available. 2.4 Prior to admission to the appropriate special class, the CEH Guidance Counselor shall meet with the student and parent or guardian in order to provide orientation. 2.5 Where necessary, bus transportation shall be arranged by the CEH Area Supervisor. 2.6 All students are to be reevaluated semi-annually and reexamined at least every three years, if they remain in the program for that length of time. 3. GUIDELINES FOR STUDENTS FOUND TO REQUIRE PLACEMENT IN SPECIAL DAY SCHOOLS FOR SOCIALLY MALADJUSTED AND EMOTIONALLY DISTURBED CETEBREN. 3.1 When a school and/or Community School District or High School office is advised of the student's eligibility for the SHED Day Schools, as described in Section 1 above, they will then prepare the application form for Special Day Schools. The Special Day School application form must be approved in writing by the appropriate community or high school superintendent. 3.2 This form is to be given to the responsible Bureau of Child Guidance worker, who will forward the form, the clinical findings and copies of all pertinent records to an Assignment Committee, which consists of a Borough Representative of the Bureau for Socially Haladjusted and Emptionally Disturbed Children and a Bureau of Child Guidance representative of the Burezu of Child Guidance. -100-

Page Four

- 3.3 The Assignment Committee will assign the student to an appropriate SMED Day School.
- 3.4 The Assignment Committee will notify the principal of the sending school or the Community Superintendent of the special school to which the student was assigned.
- 3.5 The sending school shall obtain the written permission of the parent for the transfer of the student to the Special SMED Day School.
- 3.6 On the day scheduled for admission, the principal and guidance counselor of that Special School shall interview and provide appropriate orientation for the referred student and parent or guardian.
- 3.7 The SMED Day School Principal shall notify the Principal of the sending school or the Community or High School Superintendent of admission of the referred student. All permanent records will then be sent to the Special Day School, including the parent's written consent.
- 3.8 Upon admission to the Special SMED Day School the BCG team and the Day School Principal will be responsible for the semi-annual evaluation of the student. All students are to be formally reexamined at least every three years if they remain in the program for that length of time.
- 3.9 In the event that a student's placement appears to be inappropriate after a reasonable period of time, it will be the responsibility of the BCG team assigned to the SMED Day School and the SMED Day School Principal to determine a more appropriate school program.

4. DISCHARGE FROM SPECIAL CLASSES OR SPECIAL DAY SCHOOLS FOR EMOTIONALLY EXTRICAPPED CHILDREN.

- 4.1 The classes for the Emotionally Handicapped and SMED Day School Programs are planned to enable students to return to the regular school program after a reasonable amount of educational-therapeutic experience within the special programs. Follow-up services will be offered to assist the student's transition to the regular school program.
- 4.2 The CEH Supervisor and/or SHED Day School principal shall take appropriate steps to return those students to regular classes or schools who have been recommended for such return by the special CEH or SHED School clinical team after consultation with the student's special program teachers and guidance counselor.



5. COORDINATION OF REFERRAL AND PLACEMENT.

Responsibility for routing and expediting of the referral, from the time it was initiated to the time the student is admitted to the Special Class or Day School, shall be the responsibility of the Eureau of Child Guidance worker assigned to the school of origin. In cases where the referral originated in the superintendent's office, it shall be the responsibility of the Bureau of Child Guidance Program Supervisor to follow through until placement occurs.

6. COORDINATION WITH THE CONSTITUES ON THE HANDICAPPED.

The appropriate Committee on the Handicapped will be informed by the Eureau of Child Guidance when a student is determined to be eligible for a CEH class or a SMED Day School program. The Committee on the Handicapped will also be kept informed of the date of the student's placement in an appropriate program.

Very truly yours,

IRVING ANKER CHANCELLOR



iocation and administraonal supplies and equipimendations to the Assoce to changes in organinecessary.

physicians, psychologists
fl assigned to assist said
ice days and office hours,
itendent of Schools shail
rt to the Superintendent
may require.

administrative directors directors (junior grade) e assigned by the Super-

SPECTORS

ectors and assistant inapproval of the Board of

 subject to the direction and the associate super-

perintendent of Schools, perintendents and to the he activities which they

lie school athletics shall schools in the organizalk-dances, etc., as the

agrounds and community ich the administration of r extension activities as no.

rep such office days and s the Superintendent of aperintendent of Schools require.

BUREAU OF EDUCATIONAL PROGRAM RESEARCH AND STATISTICS

Section 44. 1. The Bureau of Educational Program Research and Statistics shall conduct studies, as the need arises or as the Superintendent of Schools directs, of programs, organization and administration in educational areas.

- 2. The Bureau shall collect, record, and analyze educational statistics required by the Superintendent of Schools.
- 3. The Bureau shall prepare estimates of the amount of State and Federal monies receivable in the ensuing fiscal period. At the end of each school year it shall likewise prepare a report of State and Federal monies actually due in accordance with regulations of the State Education Department.

BUREAU OF COMPULSORY EDUCATION, SCHOOL CENSUS AND CHILD WELFARE (BUREAU OF ATTENDANCE)

SECTION 45. 1. Subject to the general supervision of the Supertendent of Schools, the Bureau of Compulsory Education, School Census and Child Welfare shall enforce the provisions of the Education Law relative to the required attendance of minors upon instruction and to their employment. It shall maintain the school census.

2. With the approval of the Superintendent of Schools, the director shall prepare a manual of regulations for the proper conduct of the work required of the Bureau. Such regulations shall establish the relationship to this Bureau of members of the teaching and supervising staff and the duties required of them.

BUREAU OF CHILD GUIDANCE

Section 46. Subject to the general supervision of the Superintendent of Schools, the Bureau of Child Guidance shalt investigate, diagnose, and study all cases of maladjusted children referred to the bureau by the Superintendent of Schools. With respect to each case, the bureau shall report to the Superintendent of Schools its investigation and diagnosis together with the treatment and instruction the bureau recommends.

The Superintendent of Schools shall notify the parent or guardian of the pupil of the treatment and instruction recommended by the bureau, and the Superintendent of Schools shall have power to effectuate in whole or in part said recommendations.

2. The bureau shall be in charge of the Director of the Bureau of Child Guidance. Said director shall, under the supervision and direction of the Superintendent of Schools:

13

(a) Conduct such surveys as shall be necessary to carry out the functions of said bureau; collect, record and analyze such facts and data as may be of use in the advancement of knowledge concerning maladjusted children; prepare and issue necessary blanks and forms; supply educational data and information to the members of the teaching and supervising staff and the general public; and issue publications and reports of its work.

(b) Have charge of all matters relating to the organization and administration of the bureau; prescribe the duties of all persons in its employ; and prepare a manual of regulations for its proper conduct.

(c) Arrange for the examination by medical inspectors and psychologists, and, when indicated, by psychiatrists, of children for placement in CRMD classes; supervise the work of such medical inspectors, psychologists, psychiatrists, and school social workers, and determine the children who shall be registered in such classes.

3. The Director of the Bureau shall from time to time make recommendations to the Superintendent of Schools as to changes and improvements in the functioning of said bureau and in the treatment and instruction of maladjusted pupils, and shall prescribe, subject to the direction of the Superintendent of Schools, the duties of employees assigned to the Bureau.

BUREAU FOR CHILDREN WITH RETARDED MENTAL DEVELOPMENT

SECTION 47. 1. The Bureau for Children with Retarded Mental Development shall be in charge of a director, who, subject to the direction and supervision of the Superintendent of Schools or the associate superintendent of schools assigned to the supervision of said Bureau, shall have the management and direction of all matters pertaining to the Bureau. The term "retarde mental development" shall, unless otherwise provided in these By-Laws, have the meaning prescribed in Section 87 of these By-Laws. The director shall perform the following duties:

(a) Co duct such surveys as shall be necessary or helpful to carry out the functions of said Bureau; collect, record and analyze such facts and data as may be useful in the advancement of knowledge containing children who are mentally retarded; prepare and issue necessary blanks and forms; supply educational data and information to the teachers of such children, to the supervising and teaching staff, and to the general public; and issue publications and reports of the work of the Bureau.

(b) Have charge of all matters relating to the organization, administration, and work of the Bureau; prescribe the duties of its employees; and prepare a manual of regulations for its proper conduct.

ers a

as to

pare

appl

direct child advi such

> inter may supe

inter 2. Board of Schools,

as shall of the S

of the D in charg staff age

1.

2.

3. 4.

4. 5.

6.

14

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al.,

Plaintiffs,

-against-

ANSWER

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

75 Civ. 917

Defendants.

Defendants Nyquist, Rios, King and Detore, by their attorney, LUIS J. LEFKOWITZ, Attorney General of the State of New York, for their answer to the complaint respectfully allege as follows:

FIRST: Deny paragraphs "5", "6", and "7" as to jurisdiction of the federal courts.

SECOND: In response to paragraph "22" defendant Nyquist refers to the Court to the New York Education Law as to his powers.

THIRD: In response to paragraphs "36", "37", and "38", defendants Rios, King and Detore have such responsibilities as established by State law.

FOURTH: Deny paragraph "114" as defendant Rios and the Division of Youth recommended placement for plaintiff Prince at a regular school. See also Board of Education et al.'s answer, paragraph "84".

FIFTH: As to all other allegations in the complaint, deny knowledge or information sufficient to form a belief, except as the records of the Education Department and the Division for Youth otherwise show.

AS AND FOR A FIRST DEFENSE

SIXTH: The federal court lacks subject matter jurisdiction as to the State defendants.

AS AND FOR A SECOND DEFENSE

SEVENTH: The complaint fails to state facts sufficient to constitute a cause of action against the State defendants.

AS AND FOR A THIRD DEFENSE

EIGHTH: The Court lacks jurisdiction over the State defendants as they were not served; or were served in an improper manner.

AS AND FOR A FOURTH DEFENSE

NINTH: None of the State defendants have in any way participated in the placement of infant plaintiffs in the "600"

schools and do not operate same.

TENTH: On the contrary, defendant Rios alleges as to Malvin Prince, that defendant recommended placement at a regular school and even after this was rejected, sought transfer to a regular school.

WHEREFORE, defendant Nyquist, Rios, King and Detore request that the complaint be dismissed as to them.

Dated: New York, New York October 15, 1975

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for defendants Nyquist,
Rios, King and Detore
By

A. SETH GREENWALD
Assistant Attorney General
Two World Trade Center
New York, New York 10047
Tel. (212)488-3396

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiffs, : NOTICE OF MOTION

FOR CLASS ACTION

- against -

CERTIFICATION

THE BOARD OF EDUCATION OF THE CITY

: 75 C 917 (WB)

OF NEW YORK, et al.,

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Gene B. Mechanic, the memorandum of law submitted herewith and the pleadings herein, plaintiffs will move this Court at Court-room 3, United States Courthouse, Cadmen Plaza, Brooklyn, New york, on the 1st day of December, 1975, at 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard, for a determination pursuant to Rule 23 of the Federal Rules of Civil Procedure that the above-entitled action is maintainable as a class action, and for an order certifying it as such, and for such other and further relief as to the Court may seem just and proper.

Dated: Brooklyn, New York November 14, 1975

Yours, etc.,

CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
189 Montague Street
Brooklyn, New York 11201
(212) 858-1300
Attorney for Plaintiffs
Gene B. Mechanic, Esq.
Deborah G. Steinberg, Esq.
of Counsel

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his Mother and Legal Guardian, Carmen Lora, et al.,

- against -

Plaintiffs,

: AFFIDAVIT IN

SUPPORT OF MOTION

: FOR CLASS ACTION

CERTIFICATION

THE BOARD OF EDUCATION OF THE CITY

75 C 917 (WB)

Defendants.

STATE OF NEW YORK) ss.: COUNTY OF KINGS)

OF NEW YORK, et al.,

GENE B. MECHANIC, being duly sworn, deposes and says:

- 1. I am an attorney duly admitted to practice before this court and am of counsel to CHARLES SCHINITSKY, ESQ., THE LEGAL AID SOCIETY, attorney for Plaintiffs herein. I submit this affidavit in support of Plaintiffs motion for class action certification.
- 2. This action is properly brought as a class action. The class is so numerous that joinder of all members is impracticable. The class which Plaintiffs seek to represent includes all persons who are Black or Hispanic and are in placement at a "Special Day School for Socially Maladjusted and emotionally Disturbed" childred. Upon information and belief, there are approximately 2,650 Black or Hispanic persons so

placed presently. 3. There are common guestions of law and fact namely whether Defendants' actions of placing minority students into the racially and sexually segregated special day schools violates the rights of Plaintiffs and their class under the Constitution of the United States and the Civil Rights Acts of 1870, 1871, and 1964, and whether the complained of search and seizures and corporal punishment violate Plaintiffs' constitutional rights. 4. The claims of the representative Plaintiffs are typical of the claims of the members of the class, and it can reasonably be expected that Defendants will interpose identical defenses to such claims. 5. The representative Plaintiffs and their attorneys, The Legal Aid Society of the City of New York, Juvenile Rights Division, will fairly and adequately protect the interests of the class. 6. Plaintiffs seek this action to be declared a class action pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure. The Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injuctive relief appropriate with respect to the class as a whole. Alternatively, Plaintiffs seek this action to be declared: a class action pursuant to Rule 23(b) (1) (A). The prosecution of separate actions by or aginst individual members of the class would create a rist of inconsistent or varying adjudications -1.11with respect to individual members of the class which would establish incompatible standards of conduct for Defendants.

Alternatively, Plaintiffs seek this action to be declared a class action pursuant to Rule 23(b) (3). The common questions of law and fact as to the claims of Plaintiffs' class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

- 7. In addition, Plaintiffs bring this action against the named Defendants who are assistant high school superintendents community school district superintendents and public school principals in the City of New York and all others similarly situated as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure. They are members of a class of persons who are authorized to approve the transfer of Plaintiffs and members of their class to "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed."
- 8. This action is properly brought against such class because the above class is so numerous that joinder of all members is impracticable. Upon information and belief there are approximately nine hundred sixty (960) assistant high school superintendents, community school district superintendents and public school principals in the City of New York authorized to place Plaintiffs and members of their class in special day schools.

- 9. There are common questions of law and fact, namely whether Defendants' action approving the placement of Plaintiff class in sepcial day schools violates Plaintiffs' rights under the Constitution of the United States.
- 10. Upon information and belief, the defenses of the representative Defendants will be typical of the defenses of the members of the class.
- 11. Upon information and belief, the Corporation Counsel of the City of New York, attorneys for the Defendant class, will fairely and adequately protect the interest of the Defendant class.
- action pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure. The Plaintiffs have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and corresponding declaratory relief with respect to the class as a whole Alternatively, this action is maintainable pursuant to Rule 23(b) (1) (A). The prosecution of separate actions by or against individual members of the Defendant class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Plaintiffs. Alternatively, this action is properly maintainable pursuant to Rule 23(b) (3). The common questions of law and fact predominate over any questions affecting only individual

members. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

13. Plaintiff; bring this civil rights action pursuant to 42 U.S.C. §§ 1981, 1983 and 2000(d). They seek only declaratory injunctive and other equitable relief. There is no claim for damages.

WHEREFORE, based upon the above and the reasons set forth in the accompanying memorandum of law, it is respectfully regested that Plaintiffs' request for a class action designation be granted in all respects.

GENE B. MECHANIC

Sworn to before me this 14th day of November, 1975

GAIL WELT
Notary Public, State of New York
No. 24-4611811
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiffs,

-against
THE BOARD OF EDUCATION OF THE CITY

OF NEW YORK, et al.,

Defendants.

X

AFFIDAVIT IN OPPOSITION TO CLASS
ACTION CERTIFICATION

(W.B.)

JOSEPH F. BRUNO, being duly sworn, deposes and says:

1. I am an attorney in the office of W. BERNARD RICHLAND, Corporation Counsel, City of New York, attorney for city defendants.

STATE OF NEW YORK

COUNTY OF NEW YORK)

- 2. This affidavit is submitted in opposition to plaintiffs' motion for class action certification and in support of defendants' position that this action is inappropriate for class relief.
- 3. Plaintiffs are seven (7) Black or Hispanic children who attend Special Day Schools for Socially Maladjusted and emotionally Distrubed children (hereinafter referred to as "SMED" schools). They seek to represent a proposed class of "all persons who are Black and Hispanic and are in placement at a "Special

Day School for Socially Maladjusted and Emotionally Disturbed' children" and allege a variety of unconstitutional in ringements of their rights and the rights of the proposed class.

4. Defendants contend that the SMED schools are one

- 4. Defendants contend that the SMED schools are one part of a total program of special education provided by the Division of Special Education and Pupil Personnel Services (DSEPPS) and the Bureau for the education of Socially Maladjusted and Emotionally Disturbed children (BSMEDC) and that these schools provide an appropriate and meaningful program for the education and socialization of emotionally handicapped children
- 5. Defendants contend that where, as in the case at bar, a prohibitory injunction against a public agency is sought seeking to halt its administrative practices or or policies, declaratory and injunctive relief will adequately protect all persons subject to the challenged practices without the need for class designation of certification. This is particularly true when the governmental body acknowledges that it would not persist in continuing a policy or practice toward anyone, regardless of class certification, that was deemed to be unconsitutional.
- 6. In the case at bar, the defendants assert that if any policy or practice engaged in at the SMED schools was held by this Court or other higher courts to be unconstitutionaly, said policy would be terminated as to all SMED students regardless of whether class certification was approved. The Court is respectfully referred to Point I of Defendants' Brief in Opposition

to Class Action Certification, which is specifically incorporated herein and made a part hereof, for a full discussion of this issue. 7. In the alternative and assuming arguendo that this Court deems it necessary to look into whether plaintiffs' action properly meets the requirements of FRCP 23, this Court is respetfully referred to Point II of Defendants' Brief in Opposition to Class Action Certification, which is specifically incorporated herein and made a part hereof, for a full discussion on defendants argument that plaintiffs have failed to meet all the prerequisites of FRCP 23(a) or fall within any of the class action types set forth in FRCP 23(b). 8. In sum defendants assert that class action status for plaintiffs in the case at bar is unnecessary and inappropriate and should be denied. 9. Plaintiffs also assert that this action should also be declared as a proper defendants' class action. This Court is respectfully referred to Defendants' Brief in Opposition to Class Action Certification, Point III which is specifically incorporated herein and made a part hereof, for defendants' rgument that this action is not a proper defendants' class action and permission to so proceed would be both inappropriate and unnecessary. -117-

JOSEPH F. BRUNO

Sworn to before me this
28th day of November, 1975

DORON GOPSTEIN
Notary Public, State of New York
No. 31-6596675
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiffs,

-against-

: No. 75 C 917

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

January 6, 1976

Defendants.

Appearances:

CHARLES SCHINITSKY, ESQ. The Legal Aid Society Attorney for Plaintiffs

GENE B. MECHANIC, ESQ.
DEBORAH G. STEINBERG, ESQ.
Of Counsel

W. BERNARD RICHLAND, ESQ. Corporation Counsel Attorney for Defendants

JOSEPH F. BRUNO, ESQ. Of Counsel

MEMORANDUM and ORDER

BRUCHHAUSEN, D. J.

The plaintiffs move pursuant to Rule 23 of the Federal Rules of Civil Procedure for a determination that

this action be maintainable as a class action. Secondly, plaintiffs move for an order, pursuant to Rules 34 and 37 of the Federal Rules of Civil Procedure, compelling defendants to produce records, maintained by the Bureau of Child Guidance, and to inspect defendants special day schools for socially maladjusted and emotionally disturbed children.

This action was commenced pursuant to the Civil Rights Act, 42 U.S.C. 1981, 1983 and 2000(d) seeking injunctive and declaratory relief. The suit was instituted by seven Black and Hispanic children, assigned to public schools for socially maladjusted and emotionally disturbed children (SMED Schools), also referred to as "600" schools, under the jurisdiction of the Board of Education of the City of New York. It is claimed that placement in these schools violates plaintiffs' rights under the Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

The suit is also against individual local and state defendants, as well as the named defendants who, as assistant high school superintendents, community school

district superintendents or public school principals, members of a class, who are authorized to approve the transfer to the SMED schools.

In brief, it is alleged that the rights of the plaintiffs to due process, equal protection, equal educational opportunity, and to be free from involuntary servitude are being violated as a result of being placed into these special day schools whose population is overwhelmingly Black and Hispanic, without providing them with adequate and appropriate education. Plaintiffs contend that less than 10% of these children attending these schools will earn a high school diploma, and that by being "pushed out" of their regular schools the defendants have failed to provide these children with an adequate academic program. Also less restrictive and more effective educational alternatives can be used. It is alleged that these assignments are made without any evidentiary hearing to determine if these assignments are justified. That these "600" schools are sexually segregated and that the practice of daily searches of the students for weapons violates their rights to be free from unreasonable search

and seizure, and to their rights of privacy. Furthermore, the defendants' use of corporal punishment or excessive use thereof results in cruel and unusual punishment in violation of due process of law. Finally, these special education classes are not conducted within the regular public schools, which would provide the "600" students with smaller classes and additional staff resources.

The plaintiffs seek to have the above acts declared unconstitutional.

The defendants argue that the SMED schools provide proper and meaningful education and clinical programs to aid these students, and in no respect, violate any of their guaranteed rights.

The defendants urge that the SMED schools are under the specific control of the Bureau for the Education of Socially Maladjusted and Emotionally Disturbed Children (BSMEDC), which is a bureau within its centralized Division of Special Education and Pupil Personnel Services (DSEPPS), which operates a program for the education of all handicapped and emotionally disturbed children. That

the SMED schools are geared to instruct these students in the regular academic subjects with individualized programs wherein the student and teacher become closely involved on a personal basis. That each SMED school is assigned clinical personnel and working together creates a comprehensive educational and therapeutic environment for these disturbed students. That each student prior to placement in a SMED school is screened and must be clinically assessed by professionals to determine whether the student is handicapped and whether SMED school placement is appropriate. Also parental consent is required at each stage of this procedure. That sexual segregation is based upon sound educational reasoning because coeducational classes would result in overwhelmingly ratios of boys to girls. That there is no practice of daily searches of the students, and that corporal punishment is expressly forbidden. Finally, these SMED schools operate as a viable and useful educational tool established to assist any emotionally handicapped student, within constitutional guidelines.

The court in determining whether a class certification is appropriate is referred to Galvan v. Levine, 490 F.2d 1255, cert. denied 417 U.S. 936, in which the court held in part at page 1261:

"** But insofar as the relief sought is prohibitory, an action seeking declaratory or injunctive relief against state officials on the ground of unconstitutionality of a statute or administrative practice is the archetype of one where class action designation is largely a formality, at least for the plaintiffs. As we have recently noted in Vulcan Society v. Civil Service Comm'n, 490 F. 2d 387,399 (1973), what is important in such a case for the plaintiffs or, more accurately, for their counsel, is that the judgment run to the benefit not only of the named plaintiffs but of all others similarly situated, see Bailey v. Patterson, 323 F. 2d 201, 206-207 (5 Cir. 1963), cert. denied, 376 U.S. 910, 84 S.Ct. 656, 11 L.Ed. 2d 609 (1964); cf. United States v. Hall, 472 F. 2d 261, 265 (5 Cir. 1972), as the judgment did here. The State has made clear that it understands the judgment to bind it with respect to all claimants; ***."

In Thomas v. Weinberger, 384 F. Supp. 540 (1974) (S.D.N.Y.), the court held in part at page 543:

"***However, class action status is unnecessary in this case since any relief which might be ordered on behalf of the named plaintiffs as individuals with respect to the hearing rights mandated by due process and the adequacy of the present procedures would necessarily inure to the benefit of the class as a whole. See, e.g., Galvan v. Levine, 490 F.2d 1255 (2d Cir. 1973), cert. denied, 417 U.S. 936, 94 S.Ct. 2652, 41 L.Ed.2d

240 (1974); Tyson v. New York City Housing Authority, 369 F. Supp. 513 (S.D.N.Y. 1974); McDonald v. McLucas, 371 F. Supp. 831 (S.D.N.Y. 1974), **. The motion for class action determination is accordingly denied."

In the case at par, the defendants urge that a class action is unnecessary, and concede that in the event the plaintiffs are successful, all present practices will be terminated. It is also urged that the plaintiffs have failed to meet the requirements of Rule 23 for certification as a class action.

It is unnecessary to consider whether the requirements of Rule 23 have been satisfied, because the court after a consideration of all arguments and applicable law above referred to concludes that a class action status is unnecessary.

The motion to compel discovery of the defendants files and records is granted, subject to the conditions stated in the affidavit of Joseph F. Bruno, Esq., sworn to the 28th day of November, 1975.

It is so ordered.

A pre-trial conference shall be scheduled for March 15, 1976, at 10 A.M. in Part 3 of this Court.

Copies hereof will be forwarded to the attorneys for the respective parties.

Senior U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiff,

-against
THE BOARD OF EDUCATION OF THE CITY
OF NEW YORK, et al.,

Defendants.

-X

SIRS:

Notice is hereby given that Isaac Lora, Kelvin Walters, Ranjeet Martin, Jerome Moore, Lawrence White, Francisco Lugo and Melvin Prince, plaintiffs in the above captioned matter hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on January 6, 1976, denying plaintiffs' motion for class action certification.

CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
JUVENILE RIGHTS DIVISION
Gene B. Mechanic, Esq., and
Deborah G. Steinberg, Esq.,
of Counsel
Attorney for Plaintiffs
189 Montaque Street
Brooklyn, New York 11201
(212) 858-1300